DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20350-1000

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SECNAVINST 1850.4C
NCPB
08 March 1990

SECNAV INSTRUCTION 1850.4C

From: Secretary of the Navy

Subj: DEPARTMENT OF THE NAVY DISABILITY EVALUATION

Ref: (a) Title 10, United States Code
(b) DOD Directive 1332.18 of 25 Feb 86
(c) SECNAVINST 5300.30B
(d) Manual of the Medical Department
(e) SECNAVINST 1770.3
(f) Manual of the Judge Advocate General

Encl: (1) Abbreviations and Definitions
(2) Disability Evaluation Policies
(3) Medical Conditions and Physical Defects Which Normally are Cause for Referral to the Physical Evaluation Board (PEB)
(4) Special Instructions and Explanatory Notes, VASRD
(5) Physical Evaluation Board Procedures
(6) Petitions for Relief (PFR)
(7) Temporary Disability Retired List (TDRL) Procedures
(8) Permanent Limited Duty (PLD) Procedures
(9) Officer Disability Review Board (ODRB) Procedures
(10) Master Index

1. Purpose. To revise and simplify policies and procedures for evaluation of physical fitness for duty and disposition of physical disability in the Department of the Navy in compliance with Chapter 61 and Section 1554 of reference (a) and references (b) and (c).

2. Cancellation. SECNAVINST 1850.4B and 5420.181 and ALNAV 120-88. All other regulations and memoranda providing guidance governing disability evaluation, medical processing for disability evaluation, disability separation, PLD status, and PEB organization, procedures and delegations inconsistent with this instruction are held in abeyance pending their modification or cancellation.

3. Summary of Changes. This instruction has been extensively revised and should be read in its entirety. Major changes are:

a. Establishes a PEB which provides a single determination concerning fitness for duty;

b. Establishes a single nonautomatic appeal procedure (PFR) concerning disability determinations;

c. Establishes procedures for the PEB to provide members with an opinion on the combat-relatedness of their disability for income tax purposes;

d. Establishes a nonautomatic appeal procedure to the Judge Advocate General (JAG) concerning combat-related opinions;

e. Shifts responsibility for review of most cases for legal sufficiency from the JAG to the disability system;

f. Establishes the ODRB in accordance with Section 1554 of reference (a) and provides procedures for its operation;

g. Expands the format of system operating guidelines in enclosures (1) through (9) for ease of use by personnel who work daily within the system and by members whose cases are being processed within the system;

h. Provides in enclosure (10) a master index of enclosures (1) through (9) to facilitate ease of use;

i. Establishes a policy requiring that UNFIT FOR DUTY members be retained in a PLD status to complete active duty obligations for training received unless the disability precludes adequate performance in any billet;

j. Sets processing time standards for disability case processing; and

k. Establishes management reporting requirements to evaluate the operation of the system and trends which might suggest changes in personnel policies.

4. Applicability. This instruction applies to all members of the active force, the Reserve component, members placed on the TDRL, and former officers retired or released from active duty without pay for physical disability. Processing for punitive discharge and processing for administrative discharge for misconduct shall take precedence over processing for disability. When a punitive discharge or administrative discharge for misconduct does not result, then disability processing shall be completed.

5. Policy. Department of the Navy policy is to operate a system for disability evaluation which makes a single determination of physical fitness for duty, provides for one nonautomatic appeal for those found UNFIT FOR DUTY, assures the rights of the member afforded by law, protects the interests of the government, and eases transition to civilian life for those found unfit for further naval service.

a. No member of the naval service, including reservists, may be retired or separated for physical disability without a formal hearing if he or she demands it under section 1214 of reference (a). As a matter of policy, although not required by statute, no member of the reserve component shall be separated for being NOT PHYSICALLY QUALIFIED without a formal hearing unless he or she waives the right.

b. No member shall be separated from the naval service for disability other than by decision of the PEB under this instruction except for inactive-duty reservists found NOT PHYSICALLY QUALIFIED by the Chief, Bureau of Medicine and Surgery, as provided in paragraph 2040 of enclosure (2), or as specifically authorized by the Secretary of the Navy on a case-by-case basis.

c. The TDRL will be managed to minimize the number of members awaiting final resolution of their duty status through timely reevaluation of their disabilities every 18 months and prompt determinations of their fitness for duty.

d. The number of members who are UNFIT FOR DUTY but retained in PLD status shall be maintained at the minimum level consistent with the guidance in this instruction.

b. Procedure. Physical evaluation proceedings shall be conducted under the procedures in enclosures (2) through (8) as follows:

a. A PEB is established to act on behalf of the Secretary of the Navy (SECNAV) in making determinations of fitness for duty, entitlement to benefits, and disposition of service members referred to the Board. Excluding any case designated by the Secretary, the President of the PEB, acting for the Secretary, shall promulgate the findings of the PEB.

b. The PEB will perform record reviews in cases before it and the President of the PEB will notify the member by hand delivery or certified mail of the preliminary findings based on a preponderance of the evidence of record. Denial of eligibility for disability benefits due to misconduct requires a clear and convincing evidentiary standard. The preliminary findings will become the PEB final determination upon a finding of FIT FOR DUTY or upon waiver of the hearing right by the member.

c. The PEB will advise the member of its preliminary findings as to fitness for duty, degree of disability, entitlement to disability pay, and will provide an opinion as to the combat-relatedness for federal income tax purposes of any disability found. Dependent upon the nature of the case, a member will have options as follows:

(1) Agree with a records-only finding of FIT FOR DUTY (or PHYSICALLY QUALIFIED in the case of inactive-duty reservists). In this case, since there is no right to a hearing, the member is returned to duty or to his or her reserve status.

(2) Disagree with a records-only finding of FIT FOR DUTY (or PHYSICALLY QUALIFIED in the case of inactive-duty reservists) and request reconsideration. For the case to be reconsidered, the member must provide information not previously available or considered. The member must also state whether or not a hearing is desired if the finding of FIT FOR DUTY or PHYSICALLY QUALIFIED is unchanged. If the finding of FIT FOR DUTY or PHYSICALLY QUALIFIED is confirmed, there is no right to a hearing. Active duty members will be returned to duty. Reserve component members will be returned to their previous reserve status. TDRL personnel will be given the option of either returning to active duty or being discharged from the naval service. The Director, Naval Council of Personnel Boards (DIRNCPB) is authorized to grant a request for a hearing in the case of a finding of FIT FOR DUTY or PHYSICALLY QUALIFIED when he or she finds it necessary to preclude an error or injustice.

(3) Agree with records-only findings of UNFIT FOR DUTY and waive the right to a hearing.

(4) Agree with records-only findings of UNFIT FOR DUTY and conditionally waive the right to a hearing dependent upon the granting of special handling of his or her separation, specifically including

brief deferment of his or her separation. If the condition is satisfied, the PEB records-only findings become final, subject to reevaluation at the time of separation in the case of members being granted PLD.

(5) Disagree with records-only findings which include a finding of UNFIT FOR DUTY and exercise the right to a hearing. The PEB will then conduct a hearing and render a final determination. Disagreement with the PEB opinion on combat-relatedness is not a ground upon which the member may request a hearing. If the member does not agree with the PEB opinion on the combat-relatedness of any disability found, the member may request an opinion on that issue from the JAG.

(6) Disagree with records-only finding of NOT PHYSICALLY QUALIFIED (in the case of inactive-duty reservists) and request a hearing. The PEB will then conduct a hearing and render a final determination.

d. The member must exercise his or her options in subparagraph 6c within 15 days of notification by the PEB of the records-based determination. Acceptance will be presumed 15 days after the date notification is received.

e. For members who have been found mentally incompetent, the President, PEB, will appoint an attorney to advise the member's guardian or next-of-kin of the findings and the options available. The PEB shall conduct a hearing unless such is waived by the guardian or next-of-kin.

f. When a member exercises the right to a hearing, or when SECNAV or DIRNCPB authorizes a hearing, the PEB will conduct the full and fair hearing. The hearing panel may advise the member of its conclusions. The President, PEB, will issue the final determination.

g. The President of the PEB may defer acceptance of a case into the DES when the accompanying medical records or line of duty determination lacks detailed information required for determination of fitness, eligibility, combat-related injury, mental competence, or inactive reserve entitlement status, and task the medical facility, command, or general court-martial authority having cognizance over the submitting command or member to correct document deficiencies or supply the required information. Prompt responses to such requests shall be provided.

h. The findings of the PEB are final upon issuance by the President, PEB, or when the provisions of paragraph 6c(3) are met. The findings may not be changed, modified, set aside or reopened except for the correction of errors or upon submission of a PFR. A member may petition DIRNCPB for relief as provided in enclosure (6). The petition must be submitted within 15 days of notification of the final determination of the PEB.

i. DIRNCPB will make a determination on each petition filed based on the merits of the case, and advise the petitioner by certified letter, with copies to the President, PEB, Chief of Naval Personnel (CHNAVPERS) and the Commandant of the Marine Corps (CMC), as applicable.

j. In the special interest cases of flag and general officers, and medical corps officers of any grade, who are on active or reserve duty, in which retirement or separation for disability would result, the PEB determination will be made as a recommendation to the Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN(M&RA)), prepared for submission to the Assistant Secretary of Defense (Health Affairs) (ASD(HA)) for approval prior to final decision by SECNAV.

k. UNFIT FOR DUTY members may be retained on active duty in PLD status for a specified period of time to meet shortages against authorized strength in an enlisted skill, competitive category, designator or specialty, or a military occupational field or specialty, provided they can perform required duties in an authorized billet for that skill. UNFIT FOR DUTY members may be retained in PLD status to complete a current tour of duty or to provide continuity in key billets pending relief. Requests from UNFIT FOR DUTY members for continuation in PLD status may also be considered as provided in enclosure (8).

l. UNFIT FOR DUTY members may be retained in a PLD status for a specified period of time, at the request of a commanding officer of a medical treatment facility (MTF), to meet the need for that specific type of condition in a graduate medical education program at a specific MTF that cannot be met at that MTF by other authorized means and is essential to maintaining program accreditation. Unfit members may also be retained for MTF-specific medical research protocols. In each case, the request for retention must be fully documented to demonstrate the essentiality and must be approved by the Surgeon General (SURGEN) and the CHNAVPERS or CMC, as applicable.

m. UNFIT FOR DUTY members may be retained in a PLD status for a specified period of time, at the request of a commanding officer of a MTF, to complete a current episode of treatment at a specific MTF when the continuity of care is deemed essential for the following reasons:

(1) medical specialties or facilities are not available in the Veterans Administration (VA) system,

(2) transportation to another medical facility is medically contraindicated, or

(3) transfer to the VA would result in abandonment of care because of VA caseload. In each case, the request must be fully documented and approved by the SURGEN and the CHNAVPERS or CMC, as applicable.

n. UNFIT FOR DUTY members will normally be retained on active duty in a PLD status for the period required to complete their active service obligation for:

(1) enlisted education and training, including Enlisted Education Advancement Program, initial and advanced skill training schools which require obligation beyond initial enlistment contract, nuclear power field, advanced electronic field, and advanced technical field programs and similar programs. The CHNAVPERS or CMC may

waive this requirement on a case by case basis when as the result of a disabling condition there is no billet in which disabled members can adequately perform the required duties.

(2) funded education programs including Naval Academy, Naval Reserve Officer Training Corps (NROTC), Armed Forces Health Professions Scholarships, Uniformed Services University of Health Sciences and equivalent funded education programs; advanced education or technical training requiring additional obligated service, including postgraduate education, service school or college, law school, medical residency (including fellowships), flight training, naval flight officer training, and equivalent programs. The ASN(M&RA) may waive the requirmment in cases where the CHNAVPERS or CMC demonstrates that as the result of the disabling condition there is no billet in which the disabled officer can adequately perform the required duties.

7. Prompt Identification Of Disability. There exists no authority to omit or postpone disability evaluation of physical impairment which renders questionable the ability of service members to reasonably perform the duties of their office, grade, rank, or rating. Accordingly, commanding officers of MTFs and individual medical and dental officers shall promptly identify members presenting for medical care whose fitness for active duty is questionable, for evaluation and referral to the DES, if appropriate, under this instruction.

8. Use of Earned Leave. Under current law unused leave is reimbursed upon separation at less than full pay and allowances. Members being processed in the DES are encouraged to use their earned leave, especially leave which would be lost upon separation. Cognizant commands shall make every effort to accommodate leave requests of members physically able to do so. Commands shall not charge annual leave to members required to report for examination, medical treatment, rehabilitation, therapy, etc. A member shall not be charged annual leave when official duty or convalescent leave is the proper category.

9. Officers Separated For Disability Without Pay. An ad hoc ODRB is established as required by Section 1554 of reference (a). The DIRNCPB will convene the ODRB when needed to review, at the request of an officer retired or released from active duty without pay for physical disability, the findings and decisions of the PEB, or of the predecessor board which made that determination. Procedures for its operation are set out in enclosure (9).

10. Transition. All disability cases in the DES before 1 November 1988 will be completed under the procedures in the preceding edition of this instruction. All members on the TDRL on that date will be managed under this edition of this instruction.

11. Processing Time Standards. To minimize the amount of Navy and Marine Corps manpower awaiting determination of fitness for duty, and to provide prompt decisions to

disability precludes adequate required by statute, no member of

service members being evaluated for disability, the following time standards are established. These time standards may be exceeded only in unusual circumstances.

a. Medical Evaluations. Members removed from full duty and placed in a Medical Holding Company or on limited duty or duty for evaluation of disabling conditions by MTFs shall be returned to duty within 60 days or referred to a medical board for disposition as follows:

(1) Placement on Temporary Limited Duty (TLD) if the prognosis is that the member can be restored to full duty. The period of TLD shall be the number of months needed, applying generally accepted medical standards of practice, to correct the incapacity. The period of TLD shall not exceed 24 months. If the period of TLD is greater than 12 months, the MTF shall notify CHNAVPERS or CMC, as applicable. The period of TLD may not be extended or renewed except with the approval of the CHNAVPERS or CMC based on a medical evaluation that the additional months of TLD will be sufficient to restore the member to full duty. Upon completion of the authorized TLD, the member will be returned to duty or referred to the PEB.

(2) Referral to the PEB.

b. Medical Board. Medical board reports and referral to the DES (or return to full duty) shall be completed within 30 days of the decision to convene a medical board. Delay of acceptance by the DES for completion of case documentation requirements are included within this time standard.

c. Records-based Disability Determination. The final decision of the PEB based on a records review shall be issued within 45 days of receipt in the DES.

d. Hearing-based Disability Determination. The final decision of the PEB based on a hearing shall be issued within 90 days of receipt in the DES.

e. Petitions For Relief. The final reply to petitions for relief shall be issued within 45 days of receipt of the petition.

f. Officer Disability Review. The final reply to requests from officers retired or released from active duty without pay for physical disability for review of their case shall be issued within 45 days of the date the request is received.

12. Disability Evaluation Management Reports. Within 30 days of the end of each fiscal year, the DIRNCPB shall submit a management report of the DES, including evaluations in the following areas, to the ASN(M&RA), with copies to the Chief of Naval Operations (CNO) and CMC:

a. Caseload and trends by personnel category: active duty, inactive-duty reserves, TDRL, officer, enlisted, special interest, years of service, and age at entry. Include grade and race/ethnic categories when statistically significant.

b. Analysis of trends in discharges, retirements, temporary disability retirements, and

proportions of cases going to hearing and to petition for relief.

c. Caseload and trends by type of disability and type of disposition, including final disposition of TDRL cases, with analysis by personnel category when statistically significant. Include evaluation of first-year disabilities, disabilities of members who entered active duty with a waiver of the various classes of physical entry standards in reference (d) and disabilities found to exist prior to entry.

d. System performance against each of the time standards in paragraph 11, including proportions of cases exceeding the standards and analysis of cases delayed in acceptance by lack of required documentation.

13. TDRL And PLD Management Report. Within 30 days of the end of each fiscal year the CHNAVPERS and CMC shall submit a report of TDRL and PLD personnel, including evaluations in the following areas, to ASN(M&RA), with a copy to CNO and DIRNCPB:

a. The number of members in each category, with an analysis of trends in gains, losses and average strength by grade.

b. The categories of disabilities and trends in those categories.

c. The number of members retained on PLD by category of reasons, including hardship and continuation to retirement eligibility, with analysis of trends in these categories.

d. The rate of timely issuance of orders to TDRL periodic evaluations, timely examination appointments, timely member responses, and stoppage of pay for failure to respond, with trend analysis.

14. Legal Review Management Report. Within 30 days of the end of each fiscal year, the JAG shall submit a report of DES case legal review, including evaluations in the following areas, to ASN(M&RA) with copies to CNO, CMC, and DIRNCPB:

Legal sufficiency of PEB determinations in the categories required in enclosure (5) with trend analysis, evaluation of the types of legal errors found, and recommendations for corrective actions.

15. Responsibility

a. ASN(M&RA) is responsible for management oversight of the DES and for resolution of disability cases referred to SECNAV under this instruction.

b. The DIRNCPB is responsible for conduct of the DES as prescribed in this instruction, and the efficient resourcing and personnel management of the PEB.

(1) DIRNCPB may propose, in coordination with the CNO and CMC, changes to the system when appropriate.

(2) DIRNCPB may request ASN(M&RA) to recommend to ASD(HA), changes to reference (b) which will better serve the needs of the Department of the Navy and naval personnel.

(3) DIRNCPB will maintain liaison with the Navy, Marine Corps, JAG, the SURGEN, the Department of Defense, and other governmental agencies in matters relating to the DES. He shall keep ASN(M&RA) apprised of actions and issues which might modify or impact upon the effectiveness of Department of the Navy policies and programs under this instruction.

c. The CNO and CMC are responsible for the management of MTFs, line of duty investigations, Reserve personnel Notice of Eligibility status, PLD members and the TDRL in their respective service, to meet the policy and procedural objectives in this instruction.

d. The SURGEN, under the CNO, is responsible for professional medical support of the DES, as required in this instruction, and for ensuring conformity of reference (d) with this instruction.

e. The JAG is responsible for review for legal sufficiency in the classes of cases specified in this instruction, and for adjustments to the procedural requirements for line of duty determinations in reference (f) to efficiently support the requirements of this instruction.

f. CHNAVPERS, CMC, area or designated sub-area coordinators, and Directors of Marine Corps Districts are required to provide alternate and reserve members for service on the PEB upon request of the President, PEB.

16. Reports and Forms

a. The management reports required by this directive are exempt from reports control under SECNAVINST 5214.28.

b. DD 149 (~~2788~~ 4/90), "Application for Correction of Military Records Under the Provisions of Title 10, U.S. Code, Sec. 1552," is available from the Board for Correction of Naval Records, Department of the Navy, Washington, D.C. 20370.

c. The following forms may be ordered from the Navy supply system per NAVSUP P-2002:

NAVJAG 5800/15 (3-77), "Injury Report," S/N 0105-LF-105-8075

NAVPERS 1830/1 (2-77), "Application for transfer to Fleet Reserve," S/N 0106-LF-018-3016

NAVMED 6100/2 (5-81), "Statement of Patient concerning the findings of a Medical Board," S/N 0105-LF-206-1010.

17. Entitlement Approval. The entitlement portions of this instruction were approved by the Department of Defense Military Pay and Allowances Committee on 9 November 1989 in accordance with 37 U.S.C. 1001.

J. Daniel Howard
Under Secretary of the Navy

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ABBREVIATIONS AND DEFINITIONS

1001 ABBREVIATIONS

ASD(HA) - Assistant Secretary of Defense (Health Affairs)
ASN(M&RA) - Assistant Secretary of the Navy (Manpower & Reserve Affairs)
BAC - Blood Alcohol Concentration
BCNR - Board for Correction of Naval Records
CHBUMED - Chief, Bureau of Medicine and Surgery
CHNAVPERS - Chief of Naval Personnel
CMC - Commandant of the Marine Corps
CNO - Chief of Naval Operations
COMNAVRESFOR - Commander, Naval Reserve Forces
DES - Naval Disability Evaluation System
DIRNCPB - Director, Naval Council of Personnel Boards
DNEPTE - Did not exist prior to entry (enlistment)
DOD - Department of Defense
EPTE - Existed Prior to Entry (enlistment)
GCM - General Court-Martial
IRR - Individual Ready Reserve
JAG - Judge Advocate General of the Navy
JAGMAN - Manual of the Judge Advocate General
JFTR - Joint Federal Travel Regulations
LODI - Line of Duty Investigation
MANMED - Manual of the Medical Department
MTF - Medical Treatment Facility
NCPB - Naval Council of Personnel Boards
NOE - Notice of Eligibility
NROTC - Naval Reserve Officer Training Corps
ODRB - Officer Disability Review Board
PEB - Physical Evaluation Board
PFR - Petition for Relief
PLD - Permanent Limited Duty
SECDEF - Secretary of Defense
SECNAV - Secretary of the Navy
SECNAVINST - Secretary of the Navy Instruction
SURGEN - Surgeon General
TDRL - Temporary Disability Retired List
TLD - Temporary Limited Duty
UCMJ - Uniform Code of Military Justice
VA - Veterans Administration or Department of Veterans Affairs (A
VASRD - Veterans Administration Schedule for Rating Disabilities

DEFINITIONS

1002 Accepted Medical Principles

Fundamental deductions, consistent with medical facts, which are so reasonable and logical as to create a virtual certainty that they are correct.

1003 Active Duty

Full-time duty in the active military service of the United States. It includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the Military Department concerned. It does not include full-time National Guard duty (10 U.S.C. 101(22)).

1004 Active Duty For A Period Of More Than 30 Days

Active duty under a call or order that does not specify a period of 30 days or less (10 U.S.C. 101(23)).

1005 Active Service

Service on active duty or full-time National Guard duty (10 U.S.C. 101(24)). For the purpose of determinations under 10 U.S.C., Chapter 61, periods of active service shall be computed under 10 U.S.C. 1208. "Active service" as used in 2078 includes full-time duty in the naval service, extended active duty, active duty for training, leave or liberty from any of the foregoing, and inactive duty training.

1006 Combat-Related Injury

See 2152.

1007 Conditions Not Constituting Physical Disability

Certain conditions and defects designated by the SURGEN do not constitute physical disability and are not ratable. These include but are not limited to: alcoholism, allergy to uniform clothing, character disorders, enuresis, glucose-6-phosphate dehydrogenase deficiency, heat intolerance with disturbances of thermal regulation, homosexuality, inability to be fitted in uniform clothing, medical contraindication to administration of small pox, yellow fever or cholera immunization, motion/travel sickness, obesity, overheight, primary mental deficiency, pseudofolliculitis barbae of the face and/or neck, somnambulism, stuttering or stammering, systemic or marked allergic reactions following stings by red ants, bees, wasps or other stinging

insects, and unsanitary habits including repeated venereal disease infections.

1008 Death

Either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain including the brain stem. A determination of death must be made in accordance with accepted medical standards.

1009 Disability Benefits

Disability retirement pay and severance pay, authorized by 10 U.S.C., Chapter 61, provided for members, who, if otherwise qualified, become UNFIT FOR DUTY because of physical disability acquired or aggravated while entitled to receive basic pay. Once released from active duty and no longer entitled to receive base pay, members or former members are not authorized benefits under 10 U.S.C., Chapter 61, even though their disabilities are service connected. Rather, such members or former members must file separate disability claims with the Department of Veterans Affairs (VA). (R

1010 Disability Retired Pay

The regular periodic compensation a member receives who is retired because of disability from active service.

1011 Disability Severance Pay

The one-time compensation a member receives who is discharged because of disability resulting from active service. Also, see 10 U.S.C. 1212.

1012 Disposition

Action to be taken affecting a member's status within the naval service. As used in this instruction, the term "disposition" means one of the following:

a. continuation on or return to full duty,
b. retention on active duty in a limited duty capacity,
c. discharge with severance pay,
d. discharge without severance pay,
e. transfer to the TDRL,
f. continuation on the TDRL,
g. determination of FIT FOR DUTY and removal from the TDRL,
h. transfer to the Permanent Retired List with disability retired pay,

i. transfer to the Permanent Retired List without disability retired pay,

j. no action (under certain circumstances),

k. physically qualified for active duty in the (Naval) (Marine Corps) Reserve, or

l. not physically qualified for active duty in the (Naval) (Marine Corps) Reserve.

1013 Finality

A final decision shall be construed as having been issued when:

a. the member accepts, either actually or constructively, the findings of the PEB following a record review, subject to review and approval, or A)

b. the President, PEB, issues the Findings Letter following a formal hearing, or

c. a PFR is acted upon by the DIRNCPB or higher authority.

1014 Findings

Decisions concerning a member's fitness, eligibility, and rating arrived at by the PEB.

1015 Findings Letter

A letter from the President, PEB, DIRNCPB, or SECNAV to the member being processed within the DES informing him or her of the findings of the PEB.

1016 Guardian/Committee

A person or persons appointed by a court of competent jurisdiction to act for a mentally incompetent member under limitations, if any, established by the court. Their actions are legally binding on the member.

1017 Impairment Of Function

A lessening or weakening of the capacity of the body or its parts to perform normally, according to accepted medical principles.

1018 Impairment Of Function, Latent

Impairment which is not manifested by current signs and/or symptoms, but which is of such a nature that there is reasonable certainty, according to accepted medical principles, that signs and/or symptoms will appear within a reasonable period of time.

1019 Impairment Of Function, Manifest

Impairment which is evident by signs or symptoms.

1020 Inactive-Duty Training

a. Inactive-Duty Training, as implemented in SECNAVINST 1001.33A (NOTAL), comprises:

(1) Duty prescribed for Reserves by the Secretary concerned under 37 U.S.C. 206 and any other provisions of law; and

(2) Special additional duties authorized for Reserves by an authority delegated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned (10 U.S.C. 101(31)).

(3) It includes those duties when performed by Reserves in their status as members of the National Guard (10 U.S.C. 101(31)).

b. Inactive-duty training does not include work or study performed in connection with correspondence courses.

1021 Incurred While Entitled To Receive Basic Pay

a. "Incurred" refers to the date or time when a disease or injury is contracted or suffered, as distinguished from a later date, when the DES determines that a member has become UNFIT FOR DUTY as a result of such disease or injury. Physical disability due to natural progression of disease or injury is "incurred" at the time the disease or injury causing the disability is contracted. When the increase in physical impairment during service is in excess of that due to natural progression of the disease or injury, then the increase is due to aggravation by service.

b. "While entitled to receive basic pay" encompasses all types of duty which entitled the member concerned to receive active duty basic pay. It also includes any duty without pay which may be counted the same as duty with pay, such as reserve personnel drilling in non-pay billets. For purposes of administering disability benefits under 10 U.S.C., Chapter 61, midshipmen are not entitled to receipt of basic pay. In addition, members in an appellate or excess leave status are not

entitled to receive basic pay. This definition shall not be construed to entitle any member not on active duty, who, at the time of separation from active duty was considered physically FIT FOR DUTY, to benefits under 10 U.S.C., Chapter 61, because of an increase in impairment occurring while the member was not entitled to basic pay.

1022 Injury

Damage or wound to the body, traumatic in origin.

1023 Member

Unless otherwise defined, a "member" includes a commissioned officer, commissioned warrant officer, warrant officer, aviation candidate or enlisted person of the regular or reserve forces, including a retired person of the naval service. The words "retired person" include members of the Fleet Reserve and Fleet Marine Corps Reserve who are in receipt of retainer pay. Midshipmen of the Navy are not members (10 U.S.C. 5001).

a. "Navy" means the U.S. Navy. It includes the Regular Navy, the Fleet Reserve and the Naval Reserve.

b. "Marine Corps" means the U.S. Marine Corps. It includes the Regular Marine Corps, the Fleet Marine Corps Reserve and the Marine Corps Reserve.

c. "Member of the Naval Service" means a person appointed or enlisted in, or inducted or conscripted into, the Navy or the Marine Corps.

1024 Member, Enlisted

A person serving in an enlisted grade or rating (10 U.S.C. 5001 (a)(4)).

1025 Mental Incompetency

Mental incompetency is the condition of a member who has been found by medical authority designated in 2024 to be mentally incapable of managing his or her own financial or personal affairs. For the purposes of this instruction, mental incompetency and mental incapacitation are synonymous.

1026 Misconduct

For purposes of disability entitlements, misconduct consists of Intentional Misconduct or Willful Neglect as described in 1048 and 2081.

1027 Next of Kin:

Next of kin in order of preference: spouse; if no spouse, eldest child over age of majority (including children of a prior marriage); if there is no spouse and no child is over the age of majority, then the father or mother (when parents are living together, or separate after the member has entered the service, the father is normally considered the next of kin. When parents separate or divorce before the member's entry into the service, the parent having legal custody of the member will be considered the next of kin. If neither or both parents had legal custody, give preference to the parent the member resided with prior to entry into the service); if none of the foregoing, then the eldest sibling or other blood relative in that order. c

1028 Notice Of Eligibility

A document issued under SECNAVINST 1770.3A to a reservist authorizing medical care and/or incapacitation pay.

1029 Notification Of Decision

A document issued by the President, PEB or DIRNCPB informing the CHNAVPERS or CMC, as appropriate, of the final decision and disposition in a member's case.

1030 Not Physically Qualified

A Reservist, who has not been granted a Notice of Eligibility, is NOT PHYSICALLY QUALIFIED when he or she is unable, because of disease or injury, to perform the duties of his or her office, grade, rank, or rating in such a manner as to reasonably fulfill the purpose of his or her employment on active duty.

1031 Office, Grade, Rank, or Rating

a. **Office**. A position of duty, trust, or authority to which an individual is appointed.

b. **Grade**. A step or degree in a graduated scale of office or military rank that is established and designated as a grade by law or regulation (10 U.S.C. 101(18)).

c. **Rank**. The order of precedence among members of the Armed Forces (10 U.S.C. 101(19)).

d. **Rating/Rate**. "Rating" means the name (such as "Boatswain's Mate") prescribed for members of the Navy in an occupational field. "Rate" means the name (such as Chief

Boatswain's Mate) prescribed for members in the same rating or other category who are in the same grade (such as chief petty officer or seaman apprentice) (10 U.S.C. 101(20)).

1032 Officer

"Officer" means a member of the naval service serving in a commissioned or warrant officer grade. It includes, unless otherwise specified, a member who holds a permanent enlisted grade and a temporary appointment in a commissioned or warrant officer grade (10 U.S.C. 5001(a)(5)).

1033 Officer, Commissioned

"Commissioned Officer" means a member of the naval service serving in a grade above warrant officer, W-1. It includes, unless otherwise specified, a member who holds a permanent enlisted grade or the permanent grade of warrant officer, W-1, and a temporary appointment in a grade above warrant officer, W-1 (10 U.S.C. 5001(a)(6)).

1034 Officer, Warrant

"Warrant Officer" means a member of the naval service serving in a warrant officer grade. It includes, unless otherwise specified, a member who holds a permanent enlisted grade and a temporary appointment in a warrant officer grade (10 U.S.C. 5001(a)(7)).

1035 Optimum Hospital Improvement

The point during hospitalization when the patient's medical fitness for further active service can be determined, and it is considered probable that further treatment for a reasonable period in a military hospital will not result in material change in the patient's condition which would alter his or her ultimate type of disposition or amount of separation benefits.

1036 Percentage Of Disability

The percentage ratings of the VASRD, as modified by enclosure (4) of this instruction, represent, as far as can practicably be determined, the average impairment in earning capacity resulting from diseases and injuries, and their residual conditions in civil occupations.

1037 Permanent Limited Duty (PLD)

A specified period of limited duty authorized by the CHNAVPERS or CMC for active duty members found UNFIT FOR DUTY by the PEB.

1038 Physical Disability

Any impairment due to disease or injury, regardless of degree, which reduces or precludes an individual's actual or presumed ability to engage in gainful or normal activity. The term "physical disability" includes mental disease, but not such inherent defects as behavioral disorders, personality disorders, and primary mental deficiency.

1039 Preponderance Of Evidence

That evidence which tends to prove one side of a disputed fact by outweighing the evidence on the other side. Preponderance does not necessarily mean a greater number of witnesses or a greater mass of evidence; rather, preponderance means a superiority of evidence on one side or the other of a disputed fact. It is a term which refers to the quality, rather than the quantity of the evidence.

1040 Presumption

An inference of the truth of a proposition or fact, reached through a process of reasoning and based on the existence of other facts. Matters which are presumed need no proof to support them, but may be rebutted by evidence to the contrary.

1041 Proximate Result Of Active Duty

Arising out of service or may reasonably be assumed to be the effect of service, will be considered the proximate result of the performance of active duty or inactive duty training, as the case may be.

1042 Reserve Component

Either the United States Naval Reserve or the United States Marine Corps Reserve (10 U.S.C. 261).

1043 Secretary

Unless otherwise qualified, refers to the Secretary of the Navy.

1044 Temporary Disability Retired List (TDRL)

The TDRL is a list maintained by the CNO or CMC of members who are UNFIT FOR DUTY because of physical disability, who meet the requirements of 10 U.S.C., Chapter 61 for disability retirement, and whose disabilities are not yet determined to be stabilized or permanent.

1045 Temporary Limited Duty (TLD)

A specified period of limited duty, not to exceed 24 months, authorized at a medical treatment facility by a medical board for cases in which the prognosis is that the member can be restored to full duty within the specified period.

1046 Trustee

a. 37 U.S.C. 602 authorizes the SECNAV to appoint any person to receive active duty or retired pay of an incompetent member for the benefit of the member. That authority has been delegated to the JAG.

b. A trustee appointed by the JAG for the purposes of 37 U.S.C. 602 is a person who is authorized to receive and distribute the active duty or retired pay of a member of the Navy or Marine Corps, for the benefit of the member, who has been found mentally incapable of managing his or her financial affairs. This person, or the primary next of kin, has authority to act for the member in electing the member's options following receipt of PEB findings.

1047 Unauthorized Absence

Any absence from duty without authority such as contemplated under Articles 85 and 86 of the UCMJ.

1048 Unfit For Duty

A member is UNFIT FOR DUTY when he or she is unable, because of disease or injury, to perform the duties of his or her office, grade, rank, or rating in such a manner as to reasonably fulfill the purpose of his or her employment on active duty.

1049 Willful Neglect

The intentional, unjustifiable, and inexcusable failure of the individual to perform some act or duty:

a. required in the occupation in which the individual was engaged at the time of incurring a physical impairment, or

b. required of the individual as a legal obligation, or

c. which could be reasonably evident to the average individual as required to protect such an individual from foreseeable injury or harm.

DISABILITY EVALUATION POLICIES

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specified period of time, at the

5. [illegible] paragraph and changes to reference (b) which will reason

DISABILITY EVALUATION POLICIES

PART A - INTRODUCTION AND ADMINISTRATIVE POLICIES

2001 OBJECTIVES

Evaluation of physical disability within the Navy Disability Evaluation System (DES) has as its objectives:

a. the maintenance of a physically fit and combat ready Navy and Marine Corps, including Reserve components; and

b. equitable consideration of the interests of the government and individual service members.

2002 SUMMARY OVERVIEW

An individual case enters the Navy DES when a medical board is forwarded to and accepted by the Physical Evaluation Board (PEB). Referral of a medical board to the PEB can come from a number of sources. Once a case has been accepted by the PEB, the PEB conducts a records review of the case. The individual concerned is then notified of the preliminary findings and is given a 15 calendar day period in which to make a decision concerning the findings. If the member accepts the preliminary findings, then the case is finalized and appropriate disposition of the member directed. If the member does not agree with the preliminary findings, the member can request reconsideration of that decision by the same panel if additional information is submitted, and/or request a personal hearing before a hearing panel of the PEB. Dependent upon certain factors later described in this enclosure, the member may or may not proceed to a personal appearance before a hearing panel. If a hearing panel hears a case, it makes findings and, subsequent to legal review and/or quality assurance review, the case is finalized and appropriate disposition directed. If a member disagrees with the results, he or she can petition internally, within certain time constraints, to the Director, Naval Council of Personnel Boards (DIRNCPB) or to the Board for Correction of Naval Records (BCNR).

2003 GUIDANCE TO MEMBERS

Cases are very individual and can be very complex. Accordingly, the 2002 summary is designed just to provide a general overview. Personnel with specific problems should review more detailed sections of this and other applicable instructions or consult with a DES counselor or an attorney.

2004 COUNSELING

A member or, in appropriate cases, the next of kin or legal guardian shall be carefully counseled in clearly understandable terms by a DES or collateral duty counselor concerning the significance of action being taken in a case, its probable effect on his or her future, and options available. Counselors shall discuss such other matters as estimated retired or severance pay, probable retired grade, potential veteran benefits, post-retirement insurance programs, the Survivor Benefit Plan, and recourse to and preparation of Petitions For Relief. Counseling shall be provided before, during, and after PEB consideration, at each stage of processing, and as questions are raised by the member.

2005 COUNSELORS

a. The DIRNCPB shall assign counselors to medical treatment facilities (MTFs), where the volume of cases entering the DES warrants a full-time counselor, to provide counseling for members at and near those activities. At those naval MTFs where regularly assigned DES counselors are not available, the officer in command shall designate a staff member, preferably the Patient Administration Officer or an assistant, to provide disability counseling as a significant collateral duty. DES counselors and collateral duty counselors will, in addition, provide disability counseling as necessary for members of the naval service in MTFs controlled by other services.

b. DES counselors shall be senior enlisted (E-7 or above) or equivalent civilian employees.

2006 COUNSELOR TRAINING

The DIRNCPB, in order to ensure effective counseling prescribed under 2004 above, will provide a Counselor's Manual and annual conference training to both DES and collateral duty counselors. Travel funding for collateral duty counselors shall be provided by the MTF to which assigned.

2007 CONFLICT OF INTEREST

a. No officer may appear as the member being evaluated by a panel of the PEB which was convened by him or her, by anyone temporarily succeeding to his or her office, or by any subordinate in the chain of command.

b. No medical corps officer shall act as a member of a panel of the PEB if he or she had either direct charge of the member's care immediately preceding evaluation by a panel,

prepared medical reports under consideration by a panel, or was a member of a board of medical officers which reported on the member concerned.

c. No member of a records review panel who is being processed by the PEB may be evaluated by that records review panel. In such cases, the President, PEB, will designate another records review panel to consider the case. The new records review panel may not include any members of the original records review panel.

d. No member of a hearing panel who is being processed by the PEB may be evaluated by the hearing panel of which he or she is a member.

2008 RESTRICTION ON COMMUNICATIONS WITH MEMBERS

Except during the course of a formal hearing, PEB panel members shall not engage in discussion with members under evaluation regarding their cases. The creation of any inference of undue influence or partiality shall be scrupulously avoided.

2009 RESERVIST PARTICIPATION

a. ***Reserve Representation Required.*** Each panel of the PEB shall include at least one member who is a Navy or Marine Corps Reservist when evaluating the fitness for active duty of a member of the Naval or Marine Corps Reserve (10 U.S.C. 266).

b. ***Failure To Have Reserve Representation During Records Review.*** If, after referral of a Reservist's case to a hearing panel, it is discovered that no member of the records review panel was a Reservist, the case will be considered by a properly constituted hearing panel without return of the case to a records review panel for reconsideration. Hearing panel consideration is tantamount to a "de novo" proceeding and meets the protective requirements of 10 U.S.C. 266.

2010 TRAVEL EXPENSES

a. ***Members On The Temporary Disability Retired List.*** A member on the TDRL is entitled to travel and transportation allowances authorized by Joint Federal Travel Regulations (JFTR) for members in his or her retired grade for travel in connection with temporary duty while on active duty for periodic physical examinations and appearances before the PEB. See 7014.

b. ***Active Duty Members Appearing Before A Hearing Panel.*** Personal appearance before a hearing panel by active duty members is official business and shall be covered by orders providing for

all of the appropriate travel expenses authorized by the JFTR.

c. ***Inactive-Duty Reservists With A Notice Of Eligibility (NOE).*** Same as b above.

d. ***Inactive-Duty Reservists Without A Notice Of Eligibility (NOE).*** Inactive-duty reservists without an NOE who desire to appear before a hearing panel must do so at no expense to the government.

e. ***Attendants.*** Certain members discussed in a, b, and c above may be incapable of traveling alone as determined by the attending physician. An accompanying attendant is entitled to travel and transportation allowances as authorized by the JFTR. An attendant may be a member of the Uniformed Services, a civilian employee of the U.S. government, or any other person considered suitable by the member and by the appropriate authority ordering the physical examination or appearance.

2011 LEAVE

a. Members whose cases are being evaluated within the DES, if otherwise physically able to do so, shall be permitted to take earned annual leave. The command authorizing leave will notify the cognizant DES counselor of the inclusive dates and the member's leave address and phone number. Commands shall recall the member if required by the President, PEB.

b. Commands shall not charge annual leave to a member who is required to report to an MTF for treatment, examination, rehabilitation, therapy, etc., or when convalescent leave is the proper category of absence.

c. Members who have earned leave which they are unable to sell upon disability separation or retirement shall be permitted to utilize the additional leave prior to their separation date.

2012 SPECIAL INTEREST CASES

a. Special interest cases are those cases which are designated by SECNAV for referral to ASN (M&RA) for final determination. As required by paragraph 6j of the basic instruction, all cases involving flag and medical corps officers on active or reserve duty, who are determined by the PEB to be UNFIT FOR DUTY, are designated special interest cases due to statutory or regulatory handling requirements.

b. The DIRNCPB may in his discretion designate a case as one of special interest.

2013 PROMPT IDENTIFICATION OF DISABILITY

The time of processing a medical board for disability separation or retirement shall be determined on an individual basis in the light of the interest of both the service and the member. There exists no authority to omit or postpone disability evaluation of physical impairment which renders questionable the ability of service members to reasonably perform the duties of their office, grade, rank, or rating. Accordingly, commanding officers of MTFs and individual medical and dental officers shall promptly identify members presenting for medical care whose fitness for active duty is questionable, for evaluation and referral to the DES, if appropriate, under this instruction.

2014 CHANGE OF COMPETITIVE CATEGORY, SPECIALTY, RATING, OR MOS

Where feasible, consideration shall be given to reclassifying a member to an office or military specialty for which he or she would be FIT FOR DUTY before processing for disability separation or retirement.

2015 RESERVED

PART B - MEDICAL BOARD REQUIREMENTS

2016 PURPOSE OF MEDICAL BOARDS

A medical board serves to report upon the present state of health of any member of the Armed Forces and as an administrative board by which the convening authority or higher authority obtains a considered clinical opinion regarding the physical status of service personnel.

2017 RESERVED

2018 CONVENING MEDICAL BOARDS

a. Medical boards may be convened by commanding officers and officers in charge of naval hospitals and other MTFs designated by the Chief, Bureau of Medicine and Surgery (CHBUMED).

b. Convening of a medical board may be ordered by the Chief of Naval Operations (CNO), Commandant of the Marine Corps (CMC), Commander in Chief's, Chief of Naval Personnel (CHNAVPERS), Surgeon General (SURGEN), and the CHBUMED.

2019 REPORTS - GENERAL REQUIREMENTS FOR BOARDS BEING REFERRED FOR DISABILITY EVALUATION

a. ***Medical Evaluation.*** The report of the medical board shall make a clear statement of its finding that the member's fitness for continued active service is or is not questionable by reason of physical impairment. A finding of questionable fitness must be supported by objective medical data displaying the nature and degree of the impairment. Medical board reports must include the results of a complete physical examination and comprehensively describe the physical condition of a member, and the nature and extent of physical impairments. The report must also include all available information, with adequate documentation, of the origin, aggravation by service, and other significant medical facts pertaining to the impairments observed including information on refusal of treatment.

b. ***Explanation Of Apparent Contradictions In The Records.*** Apparent contradictions in the records, such as the board's disagreement with a report or consultation, should be thoroughly explained. The condition of a patient following therapy, the response thereto, the degree of severity of the disease or injury, and when appropriate, their effect on the member's functional ability must be described in detail.

c. ***Prohibition Of Conclusion Of Unfitness.*** The presence

of a disease or injury does not, of itself, justify a finding of UNFIT FOR DUTY. Therefore, medical board reports shall not reflect a conclusion of unfitness or utilize the term "unfit" because it could be confused with the definition of UNFIT FOR DUTY or NOT PHYSICALLY QUALIFIED used within the DES.

2020 REPORTS - LINE OF DUTY/MISCONDUCT DETERMINATIONS IN INJURY CASES

a. JAGMAN, Chapter II requires line of duty/misconduct determinations for injuries which may result in permanent disability and identifies who is responsible to order and/or conduct them. A medical board convening authority that refers a member for disability evaluation shall include a copy of the line of duty/misconduct determination with the medical board report. Officers in command of MTFs and other convening authorities of medical boards shall request cognizant commands deliver needed line of duty/misconduct determinations with endorsements within 10 days of receipt of the request. Requests shall be made as soon as practicable and not later than the date of convening the medical board.

b. When the command to which a member was attached at the time of his or her injury is unknown, is incapable of conducting a proper investigation, or if an investigation is unduly delayed or not being conducted, the medical board convening authority shall promptly request assistance from the area coordinator, or the subordinate commander authorized to convene general courts-martial (GCM) and designated by the area coordinator for this purpose. See JAGMAN 0205. The GCM authority shall provide prompt assistance to correct deficiencies.

c. ***Use Of Form NAVJAG 5800/15, "Injury Report."*** JAGMAN authorizes this brief format of reporting line of duty/misconduct determinations in any injury case in which the circumstances, in the opinion of the medical officer, concurred in by the member's commanding officer, indicate that the injury was incurred "in line of duty" and "not as a result of the member's own misconduct," or in which a JAGMAN investigation is not required. The form should not be utilized in any instance in which a misconduct finding may result or the member's action may be considered more than simple negligence: a full line of duty/misconduct determination should be conducted. Any injury incurred by a member while operating a motor vehicle with a Blood Alcohol Concentration (BAC) of .1% or more requires a full investigation.

2021 REPORTS - INACTIVE-DUTY RESERVISTS

A medical board or other authority referring an inactive-duty reservist for evaluation shall include with the medical board report a copy of the NOE for benefits or affirmatively state that the reservist is not entitled to a NOE under SECNAVINST 1770.3 series.

2022 REPORTS - PROGNOSIS OF IMMINENT DEATH

Members having a prognosis of imminent death shall be evaluated and processed in a comparable manner and time sequence as all other members. No procedures will be circumvented or omitted in the interest of timely processing. It is of paramount importance in such cases that competency issues be dealt with correctly and that counseling be complete, accurate, and thorough.

2023 REPORTS - MENTAL COMPETENCY ISSUES

a. ***Reporting Presence Or Absence Of A Determination Of Mental Incompetence.*** Each medical board report shall affirmatively state whether or not records reflect the member being evaluated is or has ever been declared mentally incompetent or shows medical evidence of mental incompetence.

b. ***Cases In Which A Statement Concerning Competency Is Required.*** A medical board report shall contain a statement concerning the member's capability to manage affairs in the following instances:

(1) all psychoses, unless resolved, as determined by the medical board;

(2) organic brain disorders with impairment of judgement;

(3) psychoneuroses, severe, when possible impairment of judgement is indicated;

(4) any situation in which a member has previously been declared incapable of managing personal affairs;

(5) all psychiatric illnesses of sufficient severity to require further hospitalization.

c. ***Determination of Mental Competency Required.*** When the medical board finds under 2023b above that the member is not capable of managing his/her affairs, the medical board convening authority shall cause a determination of mental incompetency to be made as described in 2024. The medical board shall include a

copy of this incapacitation evaluation or competency certification in its report.

d. *JAG Reporting Requirement*. The medical board convening authority shall forward one copy of the medical board report and "Incapacitation Evaluation" (or competency certification) to the appropriate personnel office as provided in JAGMAN, Chapter XV.

2024 DETERMINING MENTAL INCOMPETENCY

a. Where mental competency is an issue, disbursement of a member's pay and allowances to a trustee properly designated under Chapter XV, JAGMAN, can on be made after a determination of mental incapacity to manage personal and financial affairs by a board of medical officers convened and constituted in accordance with MANMED, Chapter 18 and 37 U.S.C. 602. Such a board must consist of three members, one of whom must be a psychiatrist. Additionally, the members of such a board must be medical officers of the Navy, Army, Air Force, or physicians employed by one of these Services, the Department of Health and Human Services, or the VA. However, in the case where a member who is on the TDRL elected to receive compensation from the VA in lieu of all retired pay from the Department of the Navy, a determination of mental incompetency by a psychiatrist other than a medical officer or physician employed by one of the Services, Departments, or agencies may be accepted subject to the approval of the Judge Advocate General of the Navy (JAG).

b. Where the member's attending physician determines that the member is mentally unable to acknowledge, i.e., accept or decline, the findings of the PEB, and is not expected to live more than 96 hours, the member's guardian appointed by a court, or, if no one has been appointed, the primary next of kin, may act on his or her behalf. The member's attending physician shall annotate this determination, and the reasons therefore, in the member's medical record. Should the member survive, however, and require active duty or retired pay, then his mental incompetency must be determined in accordance with 2024a above.

2025 RESTORATION OF MENTAL COMPETENCY

Once a determination of mental incompetency has been properly made, a finding of restoration of competency or capability to manage personal and financial affairs may be accomplished by one or two medical officers or physicians, as appropriate, one of whom must be a psychiatrist. JAG liaison is required. See JAGMAN, Chapter XV.

2026 REPORTS - ATTEMPTED SUICIDE

In each instance of an attempted suicide, the member concerned shall undergo psychiatric examination, and the report of that examination shall be included in any medical board report submitted for disability evaluation.

2027 REPORTS - MENTAL ILLNESS WITH THE ABUSE OF DRUGS AND/OR ALCOHOL

When the abuse of drugs and/or alcohol are significant factors in describing a condition of mental illness, the medical board shall provide detailed information with regard to the type and amount of drugs and/or alcohol used by the member as well as the frequency and duration of such abuse. Moreover, the board shall provide an opinion as to whether the abuse was a consequence of the mental illness, or whether such abuse was voluntary and precipitated the condition of mental illness.

2028 RESERVED

2029 FUTURE SURGICAL PROCEDURES

a. ***Planned Surgery.*** Any elective surgical procedures that might affect a member's ultimate fitness for duty should be completed prior to initiation of a medical board.

b. ***Unplanned Surgery.*** If surgery is contemplated post-submission of a medical board to the PEB, comply with the message requirements of MANMED, Chapter 18.

2030 PERIODIC PHYSICAL EXAMINATIONS (TDRL)

See enclosure (7) to this instruction.

2031 MEMBER'S ACCESS TO REPORTS AND COUNSELING

a. Unless the information contained there may, in the judgement of the medical board convening authority, have an adverse effect on the member's mental or physical health, the member shall:

(1) be provided a copy of the medical board report;

(2) be counseled regarding the findings, opinions, and recommendations of the board, and the potential for reclassification into another specialty under 2014;

(3) be afforded the opportunity to discuss findings and recommendations with each member of the board; and

(4) be afforded an opportunity to submit a statement regarding any portion of the medical board report. No precise format is prescribed. The medical board shall attach written comments to the report addressing the statements considered adverse by the member.

b. When the information contained there may, in the judgement of the medical board convening authority, have an adverse effect on the member's mental or physical health, or when the member has been determined to be incapable of managing his or her financial affairs by a board of medical officers convened and constituted in accordance with MANMED, Chapter 18, the member's spouse, next of kin, or court appointed guardian will be counseled, provided with a copy of the report, and afforded the opportunity to exercise the member's rights as discussed in a. above.

2032 - 2039 RESERVED

PART C - POLICIES CONCERNING REFERRAL OF CASES TO THE PHYSICAL EVALUATION BOARD

2040 REFERRAL TO THE PHYSICAL EVALUATION BOARD

a. ***Active Duty Members.*** As a general rule, an active duty member or a reservist on extended active duty will be referred for disability evaluation only by a medical board that has found the member's fitness for continued active service questionable by reason of physical impairment. A determination of questionable fitness must be supported by objective medical data displaying the nature and degree of the impairment. In those cases where it is not practicable to have a medical board consider the case, e.g., the member being hospitalized in a non-military hospital, the case may be referred by cognizant authority to the PEB when available medical records show that the member's fitness for continued service is questionable.

b. ***Inactive-Duty Reservists***

(1) An inactive-duty reservist who may be entitled to disability benefits because of a disability which occurred while serving on active duty or performing inactive-duty training shall be referred for disability evaluation only per SECNAVINST 1770.3 series.

(2) An inactive-duty reservist who has not been given an NOE and who has been determined by the CHBUMED to be "not physically qualified" for active duty or retention will be referred, at the member's request, to the PEB for final determination of physical condition.

c. ***Specified Physical Impairments.*** A list of physical impairments that are normally cause for referral to the PEB is contained in enclosure (3) to this instruction.

2041 CIRCUMSTANCES NOT JUSTIFYING REFERRAL TO THE PHYSICAL EVALUATION BOARD

a. ***Lack Of Motivation.*** Lack of motivation alone for performance of duty does not justify referral to the PEB.

b. ***Mere Presence Of Physical Defect.*** The mere presence of disease or injury alone does not justify referral. Referral should take place only when, in the opinion of a medical board, the defect may materially interfere with the member's ability to reasonably perform the duties of his or her office, grade, rank, or rating on active duty. Also see 2054.

c. ***Inability To Meet Initial Enlistment/Appointment***

Standards. Once enlisted or commissioned, the fact that a member may fall below initial entry or appointment standards, specified in the MANMED, does not require that the case be referred for disability evaluation.

d. ***Physical Disqualification For Special Duties.*** Physical disqualification for special duties, such as flying, does not necessarily imply physical unfitness. Referral is appropriate only in cases where the member's ability to reasonably perform active military service is in doubt.

e. ***Members Being Processed For Separation Or Retirement For Reasons Other Than Physical Disability.*** A member who is being processed for separation or retirement for reasons other than physical disability shall not be referred for disability evaluation unless the member was previously found UNFIT FOR DUTY but retained on active duty in a Permanent Limited Duty (PLD) status or the member's physical condition reasonably prompts doubt that he or she is fit to continue to perform the duties of his or her office, grade, rank or rating.

2042 DEFERRAL OR REJECTION OF CASES

a. The President, PEB may reject any case in which the following specific requirements are not met:

(1) the medical board report fails to indicate whether or not the medical records of the member reflect a previous determination of mental incompetence.

(2) the medical board report does not include a copy of a required line of duty investigation or determination, or

(3) in the case of inactive-duty reservists, the medical board report neither includes a copy of the NOE for benefits nor affirmatively states that the member is not entitled to an NOE under SECNAVINST 1770.3 series.

b. The President, PEB may defer acceptance of any case which lacks necessary or required information needed to determine fitness, mental competence, eligibility for disability benefits, or an appropriate disability rating. However, in extraordinary cases, with the concurrence of the DIRNCPB, the President may accept a case and direct evaluation based upon evidence of record.

c. If the President, PEB defers acceptance of a case, he shall specifically identify case deficiencies and task the submitting medical facility, general court-martial authority, or command having cognizance over the member, as appropriate, to

supply the required information by a date certain.

2043 REJECTION

If a case is rejected by the President, PEB, the case shall be returned to the medical board convening authority without action along with the reason for rejection. A copy of the rejection notice will be provided to CHBUMED.

2044 REPORTS - CURRENT PERFORMANCE OF DUTY

Except in cases of recent, acute, grave illness or injury, evaluation of the member's performance of duty by supervisors, e.g., letters, fitness/evaluation reports, or personal testimony, may provide the PEB with better evidence of fitness or unfitness than a clinical estimate presented by a medical board report. The PEB may request such "line" evidence from the member's current or previous duty stations.

2045 - 2049 RESERVED

PART D - POLICIES CONCERNING FITNESS VERSES UNFITNESS

2050 STANDARD USED FOR DISABILITY DETERMINATION

The sole standard to be used in making determinations of physical disability as a basis for retirement or separation is unfitness to perform the duties of office, grade, rank or rating because of disease or injury incurred or aggravated while entitled to basic pay. Each case is considered by relating the nature and degree of physical disability of the member to the requirements and duties that member may reasonably be expected to perform in his or her office, grade, rank or rating.

2051 STANDARDS AND CRITERIA NOT TO BE USED

The following standards and criteria will not be used as bases for making a determination that a member is UNFIT FOR DUTY by reason of physical disability:

a. Inability to perform the duties of his or her office, grade, rank, or rating in every geographic location and under every conceivable circumstance will not be the sole basis for a finding of unfitness.

b. Inability to satisfy the standards for initial entry into the service, except initial entry standards are applied to those being processed for pre-existing medical conditions or defects (EPTE) who entered the service with a medical waiver. See 2055.

c. Lack of a special skill in demand by the service.

d. Inability to qualify for specialized duties requiring a high degree of physical fitness, such as flying, diving, submarine, or those designated for hazardous duty pay.

e. Inability to qualify for transfer to another service or service component because of medical disqualification.

f. The presence of one or more physical defects that are sufficient to require referral for evaluation or that may be unfitting for service members in a different office, grade, rank, or rating.

g. Pending voluntary or involuntary separation, retirement, or release to inactive status.

h. Mere inability to pass a physical fitness (exercise) test.

receipt of PEB findings

2052 CRITERIA FOR MAKING UNFITNESS DETERMINATIONS

In determining a member's fitness, all relevant evidence is to be considered in assessing the member including the circumstances of referral.

a. When a referral or physical evaluation immediately follows acute, grave illness or injury, the medical board may stand alone, particularly if medical evidence establishes that continued service would be deleterious to the member's health or not in the best interest of the service.

b. Particularly in cases of chronic illness, performance documents may be expected to reflect accurately a member's capacity to perform.

c. If the evidence establishes that a member adequately performed the duties of his or her office, grade, rank, or rating until the time the member was referred for PEB evaluation, he or she might be considered FIT FOR DUTY even though medical evidence indicates questionable physical ability to perform duty.

d. Regardless of the presence of illness or injury, inadequate performance of duty, by itself, must not be considered as evidence of physical unfitness unless it appears that there is a cause and effect relationship between the two factors. See 2041.

2053 FLAG AND MEDICAL CORPS OFFICERS

An officer in pay grade 0-7 or higher or a medical officer in any grade will not be found UNFIT FOR DUTY if he or she can be expected to perform satisfactorily in an assignment appropriate to his or her grade, qualifications, and experience.

2054 PRESENCE OF DISEASE, INJURY, OR PHYSICAL DISABILITY

a. The mere presence of physical disability does not, in itself, require a finding of UNFIT FOR DUTY. It is necessary to correlate the nature and degree of functional impairment produced by physical disability with the requirements of the duties to which the member may reasonably expect to be assigned by virtue of his or her office, grade, rank, or rating (excluding special hazardous duty, such as duty involving flying, etc., but giving due consideration to the requirements of other potential sea or combat assignments). Also see 1047. (R

b. A member who has an impairment which renders him or her unable because of physical disability to perform the duties to which he or she would normally be assigned by virtue of his or

her office, grade, rank or rating may be considered to be UNFIT FOR DUTY, even though he or she may be physically capable of performing all of his or her duties at the moment. Conversely, a member convalescing from an illness or an injury, and who is likely to recover to a degree which would permit him or her to perform all of his or her duties in the near future, will be considered to be FIT FOR DUTY.

2055 ENTRY INTO THE NAVAL SERVICE WITH A WAIVER FOR A KNOWN MEDICAL CONDITION OR PHYSICAL DEFECT

A member who entered military service with a waiver for a medical condition or physical defect that usually is cause for referral to the PEB shall normally not be considered UNFIT FOR DUTY because of physical disability provided the condition has remained essentially unchanged and has not interfered with the performance of duty. If, however, based on accepted medical principles, the condition represents a decided medical risk which would probably prejudice the best interests of the Government were the individual to remain in military service, separation without benefits may be appropriate, if initiated within 6 months of initial entry on active duty. Entry physical standards shall be used in separating individuals with pre-existing medical conditions. A member with a waiver after 6 months will be processed by the PEB in a manner consistent with other disability cases.

2056 PRESUMPTION OF FITNESS IN CONNECTION WITH MEMBERS BEING PROCESSED FOR NON-DISABILITY RETIREMENT OR SEPARATION

The purpose of the disability statutes is to compensate those members who were, due to physical disability, unable to complete their careers and qualify for normal retirement benefits. When a member continued to perform the normal duties of his or her office, rank, grade, or rating until commencing processing for non-disability retirement or separation, it shall be presumed that he or she was FIT FOR DUTY. This presumption can be overcome if it can be established by a preponderance of evidence that the member, in fact, was physically unable to adequately perform the duties of his or her office, rank, grade, or rating even though he or she was improperly retained in that office, rank, grade, or rating for a period of time; or, if an acute, grave illness or injury, or other deterioration of physical condition occurred immediately prior to or coincidentally with non-disability retirement or separation processing which rendered him or her UNFIT FOR DUTY.

2057 EVIDENTIARY STANDARD USED IN FITNESS VS UNFITNESS DETERMINATION

a. A factual finding that a service member is UNFIT FOR DUTY depends on the evidence that is available to support that finding. The quality of evidence is usually more important than quantity. All relevant evidence must be weighed in relation to all known facts and circumstances which prompted referral for disability evaluation. Findings will be made on the basis of objective evidence in the record as distinguished from personal opinion, speculation or conjecture. When the evidence is not clear concerning a member's condition, an attempt will be made to resolve doubt on the basis of further objective investigation, observation, and evidence.

b. Findings with respect to fitness or unfitness for military service will be made on the basis of preponderance of the evidence. Thus, if a preponderance of the evidence indicates (D unfitness, a finding to that effect will be made. If, on the other hand, a preponderance of the evidence indicates fitness, a finding of FIT FOR DUTY will be made, and the member may not be separated or retired by reason of physical disability.

2058 INACTIVE-DUTY RESERVISTS WITH NO NOTICE OF ELIGIBILITY

When an inactive-duty reservist has not been granted an NOE, then the PEB shall only determine and record whether the member is PHYSICALLY QUALIFIED or NOT PHYSICALLY QUALIFIED.

2059 - 2069 RESERVED

PART E - ELIGIBILITY FOR DISABILITY BENEFITS AND RELATED POLICIES

2070 CONDITIONS NOT CONSTITUTING PHYSICAL DISABILITY

Only those conditions which constitute physical disabilities may be considered by the PEB. A listing of conditions not constituting physical disability is included in enclosure (1) to this instruction.

2071 NON-MILITARY MEDICAL RECORDS

A member may be processed for discharge but the PEB may not award disability benefits for an injury or disease which was treated by a non-military medical doctor or facility unless the member signs a release to allow the medical board or PEB to obtain all records relating to that treatment.

a. When a case is being processed by the PEB in which the member has refused to release all medical records, the PEB shall determine whether the member is FIT FOR DUTY or UNFIT FOR DUTY. If the member is found FIT FOR DUTY, see 2160. If the member is found UNFIT FOR DUTY, then only those conditions not related to the non-military medical treatment, if any, shall be rated. No rating or disability benefits shall be assigned to those conditions for which the member has refused to release non-military medical records.

b. Prior to the PEB issuance of a Notice of Decision in such a case, the President, PEB, must be satisfied that the member has been counseled that the refusal to release non-military medical records will result in the prohibition of disability rating and compensation for the injury(ies) or disease that was treated by the non-military medical facility.

2072 DISCIPLINARY OR MISCONDUCT ADMINISTRATIVE ACTION

R) Disciplinary separation is not precluded by the disability statutes and such separations as described herein supersede disability separation or retirement. Whenever a member is being processed for disability evaluation and, at the same time, administrative involuntary separation for misconduct, disciplinary proceedings which could result in a punitive discharge, or an unsuspended punitive discharge is pending, disability evaluation shall be suspended and the non-disability action monitored by the CHNAVPERS/CMC, as appropriate. If the action taken does not include punitive or administrative discharge for misconduct, the case will be forwarded or returned to the PEB for processing. If the action includes either a punitive or administrative discharge for misconduct, the medical board report shall be filed in the member's terminated health

record.

b. Notwithstanding a above, disability evaluation in an individual case may proceed if directed by the DIRNCPB or ASN(M&RA). In such a case, ultimate disposition shall be decided by the ASN(M&RA).

2073 DESERTERS

When a member who is being evaluated within the DES is administratively declared a deserter, the evaluation shall be terminated. No further action shall be taken until appropriate disciplinary or administrative action has been completed, the member has been reexamined, and a current medical board prepared.

2074 STATUTORY DETERMINATIONS TO BE MADE

a. The existence of a physical defect or condition that is ratable under the VASRD does not of itself provide justification for, or entitlement to, separation or retirement from military service because of physical disability.

b. Once unfitness has been determined, the PEB shall determine if the member is statutorily eligible to receive disability benefits before rating an individual. There must be findings that the disability is (a) of a permanent nature and (b) not the result of intentional misconduct or willful neglect and was not incurred during a period of unauthorized absence. To warrant retirement, the length of service and degree of disability requirements prescribed in clause (3) of 10 U.S.C. 1201, must be satisfied. To warrant separation, the degree of disability requirements prescribed in clause (4) of 10 U.S.C. 1203 must be satisfied and the member must have less than 20 years of qualifying service, under the criteria of 10 U.S.C. 1208.

2075 INELIGIBILITY FOR DISABILITY BENEFITS

A member is not eligible to receive benefits under 10 U.S.C., Chapter 61 for an unfitting physical disability if:

a. the disease or injury was incurred while not entitled to receive basic pay (i.e, Existed Prior to Entry and is not service aggravated),

b. the disease or injury was incurred while a Midshipman and is not service aggravated.

c. the disease or injury was incurred Not In Line Of Duty,

d. the disease or injury was incurred during a period of unauthorized absence,

e. the disease or injury resulted from Intentional Misconduct or Willful Neglect,

f. disease or injury incurred as a result of unreasonable refusal of medical, dental, or surgical treatment,

g. the member has not been granted a Notice Of Eligibility (applies to inactive-duty reservists only), or

h. the member refuses to release medical records (see 2071).

2076 NOT ENTITLED TO RECEIVE BASIC PAY

a. A determination of NOT FIT FOR DUTY while on active duty is not sufficient to entitle a member to disability retirement or severance pay. There must also be a determination that unfitness is due to a disability which was incurred or aggravated while entitled to receive basic pay.

b. Unless service aggravated, a disease or injury which existed prior to entry (EPTE), or in other words, was incurred while a member was not entitled to basic pay, is not ratable.

c. The fact that a member was accepted physically for active duty is not conclusive that the disability was incurred after such acceptance. It is one piece of evidence to be considered with all the medical evidence. In addition to, and in conjunction with, all other pertinent medical evidence, due consideration and weight must be given to accepted medical principles, authenticated by medical authorities, in arriving at a final determination. It is not proper to exclude such accepted medical principles in making the determination, even in cases where there is no other evidence that the disability existed prior to entrance upon active duty.

d. A member on appellate or excess leave is not entitled to basic pay.

e. Further guidance concerning EPTE and service aggravation is contained in the Rating Policies section of this enclosure.

2077 MIDSHIPMEN

Injury or disease which was incurred by a member while a midshipman is specifically excluded from disability benefits

unless service aggravated (10 U.S.C. 1217).

2078 NOT 'IN LINE OF DUTY'

Disease or injury incurred by naval personnel while in active service (see 1005) will be considered to have been incurred 'in line of duty' except when incurred:

a. as the result of the member's own misconduct.

b. while avoiding duty by deserting the service.

c. during a period of unauthorized absence.

d. while confined under sentence of a court-martial which included an unremitted dishonorable discharge.

e. while confined under sentence of a civil court following conviction for an offense which is defined as a felony by the law of the jurisdiction where convicted, or

f. while on appellate leave.

2079 PRESUMPTION OF 'IN LINE OF DUTY'

Any disease or injury discovered after a member enters active military service, with the exception of congenital and hereditary (genetically transmitted from parent to offspring) conditions, is presumed to have been incurred 'in line of duty.' Clear and convincing evidence is required to overcome this presumption.

2080 UNAUTHORIZED ABSENCE

When a disability is incurred at any time during a period of unauthorized absence, regardless of whether the absence interfered with the member's military duties, the member is excluded from receiving disability benefits (10 U.S.C. 1207). Legally excusable mental or physical conditions may provide a bona fide defense to a charge of unauthorized absence and may be an issue for the PEB to resolve in the context of disability evaluation.

2081 INTENTIONAL MISCONDUCT OR WILLFUL NEGLECT

Misconduct is wrongful conduct. However, simple or ordinary negligence or carelessness, standing alone, does not constitute misconduct. To support an opinion of misconduct it must be established by clear and convincing evidence that the injury or disease was either intentionally incurred or was the proximate result of such gross negligence as to demonstrate a reckless

disregard of the consequences. If a resulting injury or disease is such that it could have been reasonably foreseen from the course of conduct, it is said to be a 'proximate result.' The fact that the conduct violates a law, regulation, or order, -- or the fact that the conduct is engaged in while the individual is intoxicated -- does not, of itself, constitute a basis for a determination of misconduct. Such circumstances should, however, be considered along with all other facts and circumstances by the PEB in determining whether the conduct of the individual was grossly negligent and whether the incurrence of injury or disease was reasonably foreseeable as a probable result of such conduct. Willfull neglect is defined in enclosure (1).

2082 PRESUMPTION OF NOT MISCONDUCT

It is presumed that disease or injury suffered by a member of the naval service is not the result of misconduct. Clear and convincing evidence is required to overcome this presumption. The criminal evidentiary standard of beyond a reasonable doubt does not apply.

2083 APPLICABILITY OF MISCONDUCT DETERMINATION

A misconduct determination disqualifies a member from disability benefits only for the particular disability to which it applies. An injury which was incurred as the result of misconduct may later become service aggravated.

2084 EXAMPLES OF MISCONDUCT AND NOT MISCONDUCT SITUATIONS

a. If an individual intentionally wounds himself or herself with a firearm, the injury is due to his or her own misconduct.

b. If an individual handles a firearm in a grossly negligent manner and thereby wounds himself or herself, that injury is due to his or her own misconduct because a wound is a reasonably foreseeable result of the grossly negligent handling of firearms, e.g., Russian Roulette.

c. If, on the other hand, an individual was standing on a sidewalk and, while handling a firearm in a grossly negligent manner, was struck by an automobile which had gone out of control, the injuries are not due to his or her own misconduct because they would not have been reasonably foreseeable or the proximate result of the wrongful conduct in which the individual was engaged. In this example, the injuries are the result of an independent intervening cause.

2085 MISCONDUCT/LINE OF DUTY DETERMINATIONS

a. Under the laws and regulations governing the Navy Disability Evaluation System (DES), members entitled to basic pay who incur or aggravate medical conditions which make them unfit to perform their military duties are eligible to receive disability retirement or separation benefits. Members are not entitled to these benefits, however, if the physical disability resulted from the member's own intentional misconduct or willful neglect or was incurred while the member was in an unauthorized absence status.

b. Chapter II of JAGINST 5800.7C (hereinafter the JAGMAN), outlines policies and procedures for making line of duty/misconduct (LOD/M) determinations. JAGMAN section 0221 details circumstances which require such determinations. JAGMAN sections 0230 and 0231 prescribe that commands record LOD/M determinations in the member's health or dental record. When a command investigation or written preliminary inquiry has been prepared per JAGMAN, chapter II, commands will provide a copy of the inquiry, or investigation with General Court-Martial Convening Authority (GCMCA) endorsement, to the Medical Evaluation Board (MEB) convening authority for inclusion in the official records of the case which are forwarded with the MEB for PEB consideration.

c. Normally, the PEB will accept as binding the command LOD/M determination which the GCMCA has approved. When the PEB has reasonable cause to believe, however, that the LOD/M determination is incorrect, the PEB may request a review of the original determination using the following procedures:

(1) The PEB authority questioning the GCMCA LOD/M determination will forward the case to the DIRNCPB, via the President, PEB, requesting a review. To request this review, the PEB (or a majority of the PEB members, if the PEB authority raising the question is a panel) must agree that reasonable cause exists to challenge the credibility of the LOD/M determination, the PEB may consider evidence in the record, which the member has presented, or from other sources.

(2) In cases where the member presents evidence at a formal hearing, if the panel decides that what was presented did not provide reasonable cause to believe the LOD/M determination is incorrect, the PEB will inform the member of this finding, in writing, and adjudicate the case accordingly.

(3) Even though the PEB has requested a review of the LOD/M determination, it will conditionally adjudicate the case as

though an "in line of duty and not due to the member's own misconduct" determination has been made.

(4) The PEB will then forward its findings to the member to include the following statement in the Board's endorsement: "The PEB has asked for a review, by the DIRNCPB, of a prior line of duty/misconduct determination rendered in your case. Conditional processing of your case will continue under the assumption that your injury was incurred or aggravated in the line of duty and not due to your own misconduct. Should the review of the prior determination result in a contrary finding, you will not be eligible for disability benefits under chapter 61 of Title 10, United States Code, as implemented by regulations governing the Navy Disability Evaluation System. The processing of your case will not be final until this review is complete."

(5) The DIRNCPB's decision regarding an LOD/M determination is final, and is not subject to appeal to higher authority. Prior to making the final LOD/M determination, the DIRNCPB may request an advisory opinion from the Judge Advocate General. The DIRNCPB, however, can review this final determination upon receiving a Petition for Relief from the member or per other procedures outlined in this instruction. The standard for review by the DIRNCPB is whether the field commander's determination was arbitrary and capricious, unsupported by substantial evidence, or contrary to applicable statutes and regulations.

d. Under chapter 18 of the Manual of the Medical Department, the convening authority of the MEB has the responsibility to review all MEBs for completeness. Prior to referring a case for PEB review, the MEB convening authority shall review case records to ensure they contain required LOD/M determinations from the responsible field commander. The MEB convening authority shall process a case which fails to contain a required LOD/M determination according to the following principles:

(1) If the date of the injury giving rise to the requirement for an LOD/M determination was more than 2 years prior to the date of the MEB, the MEB convening authority shall continue to process the member's case, including forwarding the case to the PEB, without further effort to obtain the LOD/M determination or information normally required for making the determination. Consistent with the JAGMAN, the MEB will presume a finding of "in the line of duty and not due to the member's own misconduct" in processing such cases.

(2) If the date of the injury giving rise to the requirement for an LOD/M determination is less than 2 years from the date of the MEB, the MEB convening authority will contact the responsible field commander and request that steps be taken to properly investigate the facts surrounding the injury and to document and record appropriate findings. The MEB convening authority shall only forward the MEB to the PEB for processing if:

(a) The MEB convening authority obtains a copy of the LOD/M investigation and includes it as part of the MEB;

(b) The MEB convening authority obtains a copy of the health/dental record entry recording the LOD/M determination and includes it as part of the MEB package; or

(c) The MEB convening authority obtains a statement from the cognizant GCMCA stating that an LOD/M determination was not required (JAGMAN section 0221) or was not able to be obtained (i.e., that diligent efforts to complete the investigation were not productive due to witness unavailability).

e. If the PEB receives an MEB from an MEB convening authority which fails to contain a required LOD/M determination, processing of the MEB report will be governed by the following principles:

(1) If the date of the injury giving rise to the requirement for an LOD/M determination was more than 2 years prior to the date of the MEB reporting the medical evaluation of the associated injury/disease, the PEB will continue to process the member's case without further effort to obtain the LOD/M determination or information normally required for making the determination. Consistent with the JAGMAN and this instruction, the PEB will presume the injury or disease was incurred or aggravated "in the line of duty and not due to the member's own misconduct" in these cases.

(2) If the date of the injury giving rise to the requirement for an LOD/M determination is less than 2 years from the date of the MEB reporting the medical evaluation of the associated injury/disease, the PEB will forward the case to the PEB Legal Advisor. Upon review of the case, if it is the Legal Advisor's opinion that an LOD/M determination was not necessary, the PEB shall process the case presuming an LOD/M determination favorable to the member. If it is the Legal Advisor's opinion that the relevant facts and directives require an LOD/M determination, and the PEB President concurs, the PEB will return the MEB to the MEB convening authority for action as noted in

subparagraph d above. (If the President, PEB does not concur with the recommendation of the PEB Legal Advisor, the provisions of paragraph 5003 (a) and (b) apply.) The PEB will advise the MEB convening authority that prior to the PEB's acceptance of the MEB for consideration, one of the following actions must be completed:

(a) Obtain (or complete) a copy of the LOD/M investigation and include it as part of the MEB;

(b) Obtain (or complete) a copy of the health/dental record entry recording the LOD/M determination and include it as part of the MEB; or

(c) Obtain a statement from the cognizant GCMCA stating that an LOD/M determination was not required (JAGMAN section 0221) or was not able to be obtained. (In this case processing shall be made presuming the injury or disease was incurred or aggravated in the line of duty and not due to the member's own misconduct.)

f. In the event that the member has incurred or aggravated an injury or disease while in an unauthorized absence status, JAGMAN sections 0223c(2) and 0230d require that the member's command complete an LOD/M investigation. JAGMAN section 0223 establishes separate standards regarding injury or disease incurred during a period of unauthorized absence: one standard is for JAGMAN investigations purposes and the second standard is for purposes of physical disability payments (severance/retirement) under chapter 61 of Title 10, United States Code. Procedures set forth in the latter standard govern PEB processing of cases involving LOD/M determinations, as outlined in paragraph 2080 of this instruction.

2086 RESERVED

2087 INJURY INCURRED AS PROXIMATE RESULT OF VOLUNTARY INTOXICATION

a. Subject to the discussion in 2081, an injury incurred as the proximate result of prior and specific voluntary intoxication may be incurred as the result of misconduct. However, a finding of misconduct may only be made when:

(1) it can be clearly shown that the member's physical or mental faculties were impaired;

(2) the extent of impairment can be clearly determined; and

(3) it is clear that such impairment was the proximate cause of injury.

b. In the case of an operator of a motor vehicle, the presence in the blood stream of a BAC of 0.1 grams % or higher, standing alone, is sufficient to establish items a (1) and (2) above. The fact that the operator was intoxicated does not, however, establish a (3) above. Rather, other independent evidence such as a police report or written statement must be presented to establish that the member's injuries were a direct result of intoxication.

c. While the gross negligence of an intoxicated driver, which is the proximate cause of injury, may support a finding of misconduct with regard to the driver, injury sustained by a passenger is normally not considered the result of misconduct. Injury to a passenger is normally the result of the driver's gross negligence and not the passenger's. Accordingly, in the

case of passengers in motor vehicles, this paragraph is not applicable unless:

(1) the passenger exercises control over the operation of the vehicle,

(2) the negligence of the driver, by operation of law, can be "imputed" to another person or entity, or

(3) the evidence establishes a failure as a passenger to exercise due care for one's own safety.

2088 ALCOHOL AND DRUG-INDUCED DISEASE

a. ***General***. Inability to perform duty resulting from disease, which is directly attributable to a specific, prior, proximate, and related intemperate use of alcoholic liquor, or habit-forming drugs, shall be categorized as the result of misconduct. Habituation may or may not be associated with a specific inability to perform duty which is directly due to the specific and proximate use of alcohol or drugs. Controlled substances are listed in 21 C.F.R. 1308.

b. ***Alcohol-Induced Disease***. An alcohol-induced disease is the result of misconduct, if:

(1) according to recognized medical knowledge, it is the direct and foreseeable result of the intemperate use of alcohol; and

(2) the service member had been referred to a treatment and rehabilitation program for alcoholism at a time when the disease was preventable or treatable.

c. ***Drug-Induced Disease***

(1) If a disease, such as hepatitis, cannot be directly attributed to a specific, prior, proximate, and related intemperate use of a drug, it must be considered not due to misconduct.

(2) An individual will not be held responsible for his or her acts or their consequences if they result from mental disease. It must be determined therefore whether the drug use was a consequence of mental illness or the drug use was voluntary and brought on the mental illness. If a result of voluntary use or abuse, the findings may be misconduct and not compensable depending on the other circumstances involved; if a consequence of mental illness, no misconduct is involved. However, a determination that drug use was a consequence of mental illness

would, by the same rationale, tend to establish the existence of mental illness prior to service in those cases where intemperate use of drugs prior to service is admitted by the member. Brief experimentation with marijuana would not, in itself, meet this criterion.

2089 UNREASONABLE REFUSAL OF MEDICAL, DENTAL, OR SURGICAL TREATMENT

a. If a member unreasonably refuses to submit to medical, dental, or surgical treatment, any unfitting disability that proximately results from such refusal is incurred as a result of the member's willful neglect. However, unreasonable refusal under this section may only equate to willful neglect when the member would be FIT FOR DUTY if he or she had submitted to or complied with the treatment regimen. Additionally, a member who refuses medical treatment on a bona fide religious basis is eligible for disability benefits; refusal shall not be considered willful neglect. (A

b. The PEB must determine whether refusal of treatment was or was not, in fact, reasonable regardless of any opinion expressed in a medical board report. If the PEB finds that the refusal of treatment was unreasonable, the member shall, unless a MEDICAL BOARD CERTIFICATE RELATIVE TO COUNSELING ON REFUSAL OF SURGERY AND/OR TREATMENT (NAVMED 6100/4) is already contained in the record, be notified before a finding of willful neglect may be made, and advised that continued refusal will result in a finding of willful neglect and loss of disability benefits. (A

2090 PRESUMPTION OF MENTAL COMPETENCE

All persons are presumed to be mentally competent and thus responsible for their acts. Clear and convincing evidence is required to overcome this presumption.

2091 MENTAL RESPONSIBILITY CONSIDERATIONS

A member may not be held responsible for his or her acts and their foreseeable consequences if, at the time of commission of such acts, as a result of severe mental disease or defect, he or she was unable to appreciate the nature and quality or the wrongfulness of the acts. A member's conditions not amounting to a lack of mental responsibility as defined above does not preclude holding a member responsible for his or her acts and their foreseeable consequences. As used in this paragraph, the terms "mental disease" and "defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct. Thus, an injury which was the proximate result of acts performed while the member was mentally impaired as a result of

voluntary ingestion of an hallucinogenic drug would be deemed to have been incurred as a result of the member's own misconduct since certain properties of such drugs are notorious and their use is prohibited by Article 1151, U.S. Navy Regulations.

2092 SUICIDE ATTEMPTS

In view of the strong human instinct for self-preservation, a bona fide suicide attempt, as distinguished from other acts of intentional self-injury, shall be considered to create a strong inference of lack of mental responsibility.

2093 INTENTIONAL SELF-INFLICTED INJURY

An intentional self-inflicted injury, other than suicide discussed above, is deemed to be incurred as the result of the member's own misconduct, unless lack of mental responsibility is otherwise shown.

2094 INACTIVE-DUTY RESERVIST WITHOUT A NOTICE OF ELIGIBILITY

An inactive-duty reservist is not eligible to receive disability benefits unless he or she has been granted an NOE pursuant to SECNAVINST 1770.3A.

2095 PASSENGER MISCONDUCT

A) In accordance with 2082, injuries sustained by a passenger will be presumed not to have occurred as a result of his or her own misconduct. However, subject to the criteria set forth in 2081, this presumption may be overcome where clear and convincing evidence establishes that the passenger knew or should have known that the driver was incapable of operating a motor vehicle safely due to the intemperate use of alcohol or illegal use of a drug.

A) **2096 - 2099 RESERVED**

PART F - RATING POLICIES

2100 USE OF THE VETERANS ADMINISTRATION SCHEDULE FOR RATING DISABILITIES

a. After unfitness for military service and eligibility for benefits have been established, subject to b below, the PEB shall utilize the VA Schedule for Rating Disabilities (VASRD), to determine appropriate disability ratings.

b. Congress established the VASRD as the standard under which percentage determinations are to be made, pursuant to Title IV of the Career Compensation Act of 1949 (now principally codified in 10 U.S.C. 61). However, not all the General Policy provisions, 10 U.S.C. 61 as set forth in paragraphs 1-31 of the VASRD, are applicable to the DES. The rating policies contained in this Part replace paragraphs 1-31 of the VASRD and shall be utilized by the PEB in rating cases referred to it. The remainder of the VASRD (paragraphs 40 et seq.) is applicable except those portions that (1) pertain to Veterans Administration (VA) determinations of service connection, (2) refer to internal VA procedures or practices, or (3) are otherwise specifically identified in enclosure (4) to this instruction as being inapplicable.

c. The VASRD is primarily a guide in the evaluation of disability resulting from all types of diseases and injuries encountered as a result of or incident to military service. See 1035 for an explanation as to what the ratings represent.

d. It is essential during evaluation that each disability be viewed in relation to its whole history, reconciling the various reports into a consistent picture so that the current rating may accurately reflect the realistic overall impairment and not be unduly influenced by a recent exacerbation.

2101 RATING A CONDITION NOT LISTED IN THE VETERANS ADMINISTRATION SCHEDULE FOR RATING DISABILITIES

When unfitness is the result of a condition not listed in the VASRD, the PEB may provide a rating applicable to a disease condition or injury in which the function or functions affected and anatomical location of symptomatology are closely analogous.

2102 EXTRA-SCHEDULE RATINGS

The requirement to use the VASRD in rating disabilities vests in SECNAV the same administrative power to assign ratings in unusual cases, not covered by the VASRD, as that exercised by the Central Office of the VA. Therefore, in an exceptional case where the

VASRD ratings are found to be inadequate, an extra-schedule rating commensurate with the average capacity impairment due exclusively to service-connected disability may be assigned by the Secretary of the Navy (SECNAV). In such a case, the President, PEB must fully document the basis of the conclusion that the case presents such an exceptional or unusual disability picture, with such related factors as marked interference with employment or frequent periods of hospitalization, as to render impractical the application of the regular VASRD ratings. The President, PEB shall forward an advisory opinion to the ASN (M&RA) via the DIRNCPB.

2103 PHYSICAL IMPAIRMENTS WHICH SHALL BE RATED

a. Unfitting physical disabilities, as well as all other physical disabilities that contribute to the finding of NOT FIT FOR DUTY, are ratable.

b. Those physical disabilities determined to be unfitting or which contribute to the member's unfitness will be identified on the board's findings to distinguish them from those impairments which are not unfitting or do not contribute to the unfitness of the member, and which are not rated.

2104 PHYSICAL IMPAIRMENTS WHICH SHALL NOT BE RATED

The PEB is not authorized to rate a condition which is neither unfitting for military service nor contributing to the inability to perform military duty.

2105 PRESUMPTION OF SOUND PHYSICAL AND MENTAL CONDITION UPON ENTRY

A service member is presumed to have been in sound physical and mental condition upon entering active service, except for medical impairments and physical disabilities noted and recorded at the time of entrance.

2106 ABNORMALITIES, RESIDUAL CONDITIONS AND DISEASES PRESUMED TO HAVE ORIGINATED PRIOR TO ENTRY INTO MILITARY SERVICE

The abnormalities, residual conditions and diseases listed below shall be presumed to have originated prior to entry into military service.

a. Scars; fibrosis of the lungs; atrophy following disease of the central or peripheral nervous system; healed fractures; absent, displaced, or resected organs; supernumerary parts; congenital malformations, such as malformations with no evidence of the pertinent antecedent active disease or injury during

service, and hereditary conditions; and similar conditions in which medical authorities are in such consistent agreement as to their cause and time of origin that no additional confirmation is needed to support the conclusion that they existed prior to military service.

b. Manifestations of lesions or symptoms of chronic disease identified so soon after the date of entry on active military service that the disease could not have originated in that short a period will be accepted as proof that the disease existed prior to entrance into active service.

c. Manifestations of communicable disease within less than the minimum incubation period after entry on active service will be accepted as proof of inception prior to military service.

2107 EVALUATING THE TIME OF INCEPTION OF DISEASE OR INJURY

a. ***General***. Determinations concerning the inception of disease or injury, not noted upon entry, should not be based on medical judgement alone, as distinguished from accepted medical principles, or on history alone, without regard to clinical factors pertinent to the basic character, origin and development of such disease or injury. This determination should be based on thorough analysis of the entire evidentiary showing in the individual case and a careful correlation of all material facts, with due regard to accepted medical principles pertaining to the history, manifestations, clinical course, and character of such disease or injury. History conforming to accepted medical principles pertaining to such disease or injury should be given due consideration, in conjunction with basic clinical data concerning the manifestation, development, and nature of such disease or injury, and accorded probative value consistent with accepted medical principles in relation to other competent evidence in each case. All material evidence relating to the incurrence, symptoms, and course of the disease or injury, including official and other records made prior to and during service, together with all other evidence concerning the inception, development, and manifestations of such disease or injury, should be taken into full account.

b. ***Mental Disorders***. In cases involving mental disorders diagnosed in service on the basis of manifestations shown in service, situational disturbances characteristic of life-long maladaptive patterns of behavior and indicative of personality disorders, recurrent or chronic neuroses, and other psychiatric symptoms of long standing should be considered in determining whether the psychiatric condition existed prior to service. Assessment of pre-service contribution to those mental disorders manifesting themselves in service will consider the effect of all

psychiatric/psychologic/behavioral manifestations which occurred prior to enlistment. These include, but are not limited to, retrospectively identifiable prodromal (early) symptoms and long-standing patterns of maladaptive behavior. When the conclusion that the mental disorder of a psychotic -- or otherwise potentially significantly mentally impaired -- member existed prior to service is based upon a past history elicited from the member, the record must indicate that the member was able to relate the pre-service history in a reliable manner. When the ability of a member to relate the pre-service history in a reliable manner is questionable, corroborative information must be obtained.

2108 PRESUMPTION OF SERVICE AGGRAVATION

a. Even if the presumption of sound physical and mental condition set forth in 2105 above is overcome by a preponderance of the evidence to the contrary, any additional disability resulting from a preexisting disease or injury is presumed to have been aggravated by military service and shall be appropriately rated unless such increase in severity is clearly due to the natural progression of the disease, subject to b and c below.

b. Only specific findings of "natural progression" of the preexisting disease or injury based upon well-established medical principles, as distinguished from medical opinion alone, are sufficient to overcome the presumption of military service aggravation.

c. Acute infections such as pneumonia, acute rheumatic fever (even though recurrent), acute pleurisy, and acute ear disease and sudden developments such as hemoptysis, lung collapse, perforated ulcer, decompensating heart disease, coronary occlusion, thrombosis, or cerebral hemorrhage occurring while in active service will be presumed to be service aggravated unless it can be shown by a preponderance of the evidence that there was no permanent new or increased disability resulting therefrom during active military service.

2109 EFFECT OF IN-SERVICE MEDICAL AND SURGICAL TREATMENT TO CORRECT OR IMPROVE DISEASES OR CONDITIONS INCURRED BEFORE ENTRY INTO MILITARY SERVICE

The usual effects of medical and surgical treatment in service, having the effect of ameliorating disease or other conditions incurred before entry into service, including post-operative scars and absent or poorly functioning parts or organs, do not constitute aggravation, unless the treatment was required to relieve disability which had been aggravated by service. The term "service" used above refers only to service while entitled to basic pay.

2110 METHOD OF RATING DISABILITIES AGGRAVATED BY ACTIVE SERVICE

In cases involving aggravation by active service, the PEB rating shall reflect only the degree of disability over and above the degree existing at the time of entrance into active service, whether the particular condition was noted at the time of entrance into the active service or is determined upon the evidence of record to have existed at that time. It is necessary, therefore, in all cases of this character to deduct from the present degree of disability, the ~~de~~gree, if ascertainable, of the disability existing at the time of entrance into active service, in terms of the rating schedule, except that if the disability is total (100 percent), the EPTE factor will be recorded, and no deduction in compensable rating will be made. If the degree of disability at the time of entrance into the service is not ascertainable in terms of the schedule, no deduction will be made.

2111 HIGHER OF TWO EVALUATIONS

Some cases will not show all the findings specified in the VASRD. Where there is a question as to which of two percentage evaluations shall be applied, the higher evaluation will be assigned if the service member's disability more nearly approximates the criteria for that rating. Otherwise the lower rating will be assigned. When after careful consideration of all reasonably procurable and assembled data, there remains a reasonable doubt as to which rating shall be applied, such doubt will be resolved in favor of the member. Also see 2118d.

2112 PYRAMIDING

Pyramiding is the term used to describe the application of more than one rating to any area or system of the body when the total functional impairment of that area or system is adequately reflected under a single appropriate code. Disability from injuries to the muscles, nerves, and joints of an extremity may

overlap to a great extent and special rules for their evaluation are included in appropriate sections of the VASRD and in enclosure (4) to this instruction. Related diagnoses should be merged for rating purposes when the VASRD provides a single code covering all their manifestations. This prevents pyramiding and reduces the chances of over-rating. For example, disability from fracture of a tibia with malunion, limitations of dorsiflexion, eversion, inversion, and traumatic arthritis of the ankle would be evaluated under one diagnostic code 5262, in accordance with the effect upon ankle function, with no separate evaluation for the limitation of motion or traumatic arthritis.

2113 TOTAL DISABILITY RATINGS

Total disability will be considered to exist when the member's impairment is sufficient to render it impossible for the average person to follow a substantially gainful occupation. Accordingly, in cases in which the VASRD does not provide a 100 percent rating under the appropriate (or analogous) VA Code, a member may be assigned a disability rating of 100 percent if his or her impairment is sufficient to render it impossible for him to follow a substantially gainful occupation.

2114 CONVALESCENT RATINGS

Under certain diagnostic codes, the VASRD provides for convalescent rating to be awarded for specified periods of time without regard to the actual degree of impairment of function. Such ratings do not apply to the military since the purpose of convalescent ratings is accomplished by other means under disability laws. Convalescence will ordinarily have been completed by the time optimum hospital improvement (for disposition purposes) has been attained. The ratings for observation periods, as distinguished from convalescence, such as those "for one year" following treatment for malignant neoplasm, are not affected by this policy.

2115 ANALOGOUS RATINGS

When an unlisted condition is encountered, it will be permissible to rate it under a closely related disease or injury in which not only the functions, but the anatomical localization and symptomatology are closely analogous. Conjectural analogies will be avoided, as will the use of analogous ratings for conditions of doubtful diagnosis, or those not fully supported by clinical and laboratory findings. Nor will ratings assigned to organic diseases and injuries be assigned by analogy to conditions of functional origin.

2116 ZERO PERCENT RATINGS AND MINIMUM RATINGS

a. **Zero Percent Ratings.** Occasionally, a medical condition which causes or contributes to unfitness for military service is of such mild degree that it does not meet the criteria even for the lowest rating provided in the VASRD under the applicable code number. A zero percent rating may be applied in such cases even though the lowest rating listed is 10 percent or more, except when "minimum ratings" are specified. It should be noted that the zero percent rating does not preclude the award of compensation as prescribed by law for ratings of less than 30 percent.

b. **Specified Minimum Ratings.** In some instances, the VASRD provides a "minimum rating," without qualification as to residuals or impairment. Diagnosis alone is sufficient to justify the minimum rating. Higher ratings may be awarded in consonance with degree of severity, but no rating lower than the "minimum" may be used if the diagnosis is satisfactorily established.

c. **Minimum Ratings For Residuals.** The VASRD provides for minimum rating for "residuals" in certain medical conditions. The instructions may state "rate residuals, minimum _____ percent," or may specify what impairment to rate and give a minimum rating for that impairment. To justify the minimum rating for residuals, a functional impairment or other residual caused by the condition must exist. Otherwise, a zero percent is appropriate.

2117 ASSIGNMENT OF AGGRAVATION FACTORS WHEN PRESCRIBED TREATMENT IS REFUSED OR OMITTED

Although he or she would not be FIT FOR DUTY, a member's degree (A
of disability may have been aggravated or increased by an unreasonable failure or refusal to submit to medical or surgical treatment or therapy, to take prescribed medications, or to observe prescribed restrictions on diet, activities, or the use of alcohol, drugs or tobacco. The compensable disability rating may be reduced for non-compliance to compensate for such (A
aggravation or increase when the existence and degree of aggravation are ascertainable by application of accepted medical principles, and where it is clearly demonstrated that:

a. the member was advised clearly and understandably of (R
the medically proper course of treatment, therapy, medication or restriction; and

b. the member's failure or refusal was willful or negligent, and not the result of mental disease or of physical inability to comply.

2118 USING THE COMBINED RATINGS TABLE

When a member has more than one compensable disability, the percentages are combined rather than added (except when a "Note" in the VASRD indicates otherwise). This results from the consideration of the individual's efficiency, as affected first by the most disabling condition, then by the less disabling conditions in the order of their severity. Thus a person having a 60 percent disability is considered to have a remaining efficiency of 40 percent. If he or she has a second disability rated at 20 percent, then he or she is considered to have lost 20 percent of that remaining 40 percent, thus reducing his or her remaining efficiency to 32 percent. Hence, a 60 percent disability combined with a 20 percent disability results in a combined rating of 68 percent. The combined rating for any combination of disabilities can be determined by first arranging the disabilities in their exact order of severity and then referring to the combined ratings table on pages 10 and 11 of the VASRD in accordance with the following instructions:

a. **Combining Two Percentages**. Enter the table by locating the highest percentage in the left-hand column and reading across to where that horizontal line intersects with the vertical column headed by the second percentage. (Example: 40 combined with 20 equals 52.)

b. **Combining Three Or More Percentages**. First, combine the first two percentages as above. Second, re-enter the table by locating that combined value in the left-hand column and reading across to where that horizontal line intersects with the vertical column headed by the third percentage. (Example: 50 combined with 30 equals 65. 65 combined with 20 equals 72.) If there are additional percentages, the second step is repeated using the new combined value and the next percentage.

c. **Converting Combined Ratings**. After all percentages have been combined, the resulting combined value is converted to the nearest number divisible by 10, and combined values ending in 5 will be adjusted upward. If the combined value included a decimal fraction of 0.5 or more as a result of applying the bilateral factor, the fraction is converted to the next higher whole number; otherwise the decimal fraction is disregarded.

(Example: If the combined value is 64.5, first round off the fraction to make the combined value 65, which in turn is rounded off to 70. If the combined value is 64.4, the decimal fraction is disregarded and the combined value of 64 rounded off to 60.)

d. **Highest Calculation**. Whenever the combined ratings table is utilized, a mathematical calculation shall also be made. Whichever rating is highest will be awarded to the member.

2119 BILATERAL FACTOR

When a partial disability results from injury or disease of both arms, or both legs, or of paired skeletal muscles, the rating for the disabilities of the right and left sides will be combined as usual, and 10 percent of this value (called the Bilateral Factor) will be added (i.e., not combined) before proceeding with further combinations, or converting to degree of disability. The Bilateral Factor will be applied to such bilateral disabilities before other combinations are carried out, and the rating for such disabilities, including the Bilateral Factor as above, will be treated as one disability for the purpose of arranging in order of severity and for all further combinations.

a. The terms "arms" and "legs" are not here intended to distinguish between the arm, forearm, and hand, or the thigh, leg, and foot, but to describe to the upper extremities and lower extremities as a whole. Thus with a compensable disability of the right thigh (for example, amputation), and one of the left foot (for example, pes planus), the Bilateral Factor applies, and similarly whenever there are compensable disabilities affecting use of paired extremities regardless of location or specified type of impairment. (Except as noted in c below).

b. The correct procedures when applying the Bilateral Factor to disabilities affecting both upper extremities and both lower extremities is to combine the ratings of the disabilities affecting the four extremities in order of their individual severity and apply the Bilateral Factor by adding, not combining, 10 percent of the combined value thus attained.

c. The Bilateral Factor is not applicable unless there is partial disability of compensable degree in each of two paired extremities or paired skeletal muscles. Special instructions regarding the applicability of the Bilateral Factor are provided in various parts of the VASRD - Code 7114-7117, Code 8205-8412, etc. The Bilateral Factor is not applicable in skin disabilities rated under VASRD Code 7806.

2120 USE OF VA CODE NUMBERS

The VA code numbers appearing opposite the listed ratable disabilities in the VASRD are arbitrary numbers for the purpose of showing the basis of the evaluation assigned and for statistical analysis. Great care must be exercised in the selection of the applicable code number and in its citation on the findings letter. Each rated disability is assigned its VA code number unless a hyphenated code is expressly authorized in paragraph 27 of the VASRD. It is not proper to use additional VA codes as a means of further describing defects. The written diagnosis entered on the findings letter should include all of the description needed to clearly show the extent, severity or etiology of the condition. In the selection of code numbers, injuries generally will be represented by the number assigned to the residual condition on the basis of which the rating is determined. With diseases, preference is to be given to the number assigned to the disease itself; if the rating is determined on the basis of residual conditions, the number appropriate to the residual condition will be added, preceded by a hyphen. Thus atrophic (rheumatoid) arthritis rated as ankylosis of the lumbar spine would be coded "5002-5289." In this way, the exact source of each rating can be easily identified. In the citation of disabilities on rating sheets, the diagnostic terminology may be any combination of the medical examiner's or VASRD terminology which accurately reflects the degree of disability. Residuals of diseases or therapeutic procedures will not be cited without reference to the basis disease. Hyphenated codes are used only in these circumstances:

a. When the VASRD provides that a listed condition is to be rated as some other code, e.g., myocardial infarction rated as arteriosclerotic heart disease (7006-7005) or nephrolithiasis rated as hydronephrosis (7508-7509).

b. When the VASRD provides a minimum rating and the disability is being rated on residuals, e.g., multiple sclerosis rated as incomplete paralysis of all radicular groups (8018-8513).

c. When an unlisted condition is rated by analogy, e.g., spondylolisthesis rated as sacroiliac injury and weakness (5294-5299). When an unlisted disease, injury, or residual condition is encountered, requiring rating by analogy, the diagnostic code

number will be "built-up" as follows: the first two digits will be selected from that part of the schedule most closely identifying the part, or system, of the body involved; the last two digits will use "99" for all unlisted conditions. This procedure will facilitate a close check of new and unlisted conditions, rated by analogy.

2121 MODIFICATION OF SPECIFIC PARTS OF THE VASRD: RATING PRINCIPLES

Enclosure (4) of this instruction contains instructions and explanatory notes which modify specific parts of the VASRD. These instructions and explanatory notes are listed according to paragraphs and code numbers in the VASRD. Only those portions which require special comment, or those which have been the cause of misunderstanding in the past, are included.

2122 - 2149 RESERVED

PART G - POLICIES CONCERNING COMBAT-RELATED INJURIES

2150 PROVISION OF COMBAT-RELATED OPINION

a. Once a member has been rated, the PEB shall provide a combat-related opinion for the member which shall be binding on the appropriate finance center in the absence of guidance to the contrary from the Internal Revenue Service or from the JAG. CHNAVPERS and CMC, as appropriate, shall communicate this opinion to the separating activity and to the appropriate finance center.

b. No combat-related opinion need be made when it is clear from the record of proceedings that the member was on active duty with the armed forces on 24 September 1975.

c. The PEB will affirmatively state, for contingent use in civil service matters by the JAG, if the disability is a result of an instrumentality of war or incurred as a direct result of armed conflict.

2151 GENERAL

Retired and severance pay awarded to members who were not a member of an armed force or under a binding contract to become such a member on 24 September 1975 is considered taxable under Section 104 of the Internal Revenue Code, found as 26 U.S.C. 104. An exception to this provision exists in Section 104(b)(1)(c) for a member receiving separation or retired pay by reason of a combat-related injury.

2152 COMBAT-RELATED INJURY

The term "combat-related injury" as defined in 26 U.S.C. 104(b)(3) includes four separate categories. It means personal injury or sickness:

a. Incurred as a direct result of armed conflict,

b. Incurred while engaged in extrahazardous service, or

c. Incurred under conditions simulating war; or

d. Caused by an instrumentality of war.

2153 DIRECT RESULT OF ARMED CONFLICT

There must be a direct causal relationship between participation in armed conflict and the disabling injury. A member is within the exemption only if the disability for which retired or separated is a direct result of armed conflict in which the

e medical board report and authority shall forward one copy of th

member was personally engaged rather than merely incurred in the general area in which the United States is involved in armed conflict. The fact that a member may have incurred a disability during a period of war or in an area of armed conflict, or while participating in combat operations, is not sufficient. Rather, there must be an affirmative finding that there was a direct causal relationship between the disability and the member's engagement in armed conflict.

2154 ENGAGED IN EXTRAHAZARDOUS SERVICE

This refers to the specific conduct of such duty. In order for a disability to qualify as incurred while engaged in extrahazardous service, more is required than merely incurring the disability in the area for which extrahazardous duty pay is authorized or in the area where hazardous duty is performed. Rather, the injury must be the direct result of performing extrahazardous service and there must be a causal connection or close nexus between the performance of extrahazardous service and the disabling injury. In order for service to be extrahazardous, it is not necessary that the disability be incurred while the member was engaged in armed conflict or conditions simulating war. The following duties, while not all inclusive, are examples of extrahazardous service:

a. parachute duty;

b. EOD duty; and

c. diving duty.

2155 CONDITIONS SIMULATING WAR

An injury sustained while participating in training for combat operations such as while firing weapons or performing tactical exercises where there is a close nexus between the injury and actual training qualifies as "combat-related." Additional examples include an injury incurred as a result of hand-to-hand combat training, bayonet training, rappelling, fire fighting or damage control training, and the collision of wheeled or tracked vehicles during field exercises. Other injuries would qualify that are sustained in circumstances which are unique to military service and simulate aspects of a combat environment such as injuries incurred on a confidence or obstacle course. However, marching or drilling in a garrison situation would not qualify. Additionally, physical training or running done on an individual basis and not as part of an organized physical training activity would not qualify.

2156 INSTRUMENTALITY OF WAR

An instrumentality of war is a device or piece of equipment or vehicle designed primarily for military service and intended for use in such service at the time the injury occurs. Military aircraft and vessels and the components thereof are generally considered instrumentalities of war. An instrumentality of war may also be a device not specifically designed for military service if it is utilized in a manner peculiar to military service.

2157 APPEALS

a. The JAG shall act on behalf of the SECNAV in providing departmental appellate resolution of combat-related opinions.

b. The DIRNCPB may request an opinion from the JAG as to the appropriateness of a PEB combat-related opinion. Such opinion shall be binding on and shall be issued by the PEB.

c. A determination by the PEB that a disability is not combat-related may be appealed by the member to the JAG. The appeal shall be by letter addressed to the Judge Advocate General of the Navy (Code 327), 200 Stovall Street, Alexandria, Virginia 22332-2400 and shall set forth the reasons the member disagrees with the determination of the PEB. The member's disability evaluation proceedings will not be delayed or abated pending action on the appeal by the JAG.

d. The JAG may provide a combat-related opinion upon request by a member who was not provided one during earlier DES processing.

2158 - 2159 RESERVED

tive duty training. and that

PART H - DISPOSITION POLICIES

2160 FIT FOR DUTY (OR PHYSICALLY QUALIFIED) FOLLOWING DISABILITY EVALUATION

If the PEB determines that a member is FIT FOR DUTY or PHYSICALLY QUALIFIED, the member shall be returned to his or her normal duty or reserve status unless separated or retired on some other non-disability basis. However, for personnel on the TDRL, see 5127a(2) and 7019.

2161 UNFIT FOR DUTY FOLLOWING DISABILITY EVALUATION

Except in the cases of UNFIT FOR DUTY members being retained on active duty in a PLD status, any member on active duty or in active status who is found to be physically disabled will be retired, if eligible for retirement, or, if not so eligible, separated.

2162 INACTIVE-DUTY RESERVISTS - NOT PHYSICALLY QUALIFIED

An inactive-duty reservist who is found NOT PHYSICALLY QUALIFIED, subject to 8005, shall be honorably discharged or retired if eligible (10 U.S.C. 1004).

2163 FLAG AND MEDICAL CORPS OFFICERS

a. Officers in grade 0-7 or higher or medical officers in any grade, who are on active or reserve duty, who are processed for retirement by reason of age or length of service may not be retired for physical disability unless the initial unfitness determination is approved by the Secretary of Defense on the recommendation of the Assistant Secretary of Defense (Health Affairs) (ASD(HA)).

b. Officers in grade 0-7 or above or medical officers in any grade who are processed for retirement or separation by reason of physical disability may not be retired or separated for that reason until a recommendation therefor by the ASN(M&RA) is approved by the ASD(HA).

c. CHNAVPERS and CMC shall submit to the ASD(HA) via the ASN(M&RA) one copy of all retirement orders issued in the case of each general/flag officer (grades 0-7 thru 0-10) retired because of physical disability.

2164 PERMANENT DISABILITY RETIREMENT

a. If otherwise eligible, a member who is to be retired because of physical disability shall be placed on the permanent

retired list if within five years of the initial determination under 10 U.S.C. 1201 or 1204:

(1) based upon accepted medical principles, the member cannot reasonably be expected to recover so as to be physically fit to perform the duties of his or her office, grade, rank or rating; and

(2) the disability rating, as established under the VASRD, in use at the time of the initial determination that the member is unfit because of physical disability, cannot reasonably be expected to increase or decrease so as to change or terminate the amount of disability retired pay to which the member would be entitled.

2165 TEMPORARY DISABILITY RETIREMENT

a. If a member's nature of disability does not meet the criteria for permanent retirement set forth in 2164 above and 10 U.S.C 1202, the disability is considered to be "may be" permanent. In such circumstances, if otherwise qualified, a member shall be placed on the TDRL in accordance with 10 U.S.C. 1202 or 1205, as appropriate. Members whose disabilities are unstable will also be placed on the TDRL, if otherwise qualified.

b. Once a member's name has been placed on the TDRL, special rules and procedures become applicable. In addition, there are special disposition rules following later removal from the TDRL. Both sets of rules are set forth in enclosure (7) to this instruction.

2166 EFFECTIVE DATE OF RETIREMENT/SEPARATION

The effective date of retirement/separation because of physical disability (either permanent or temporary) normally shall be within twenty (20) days, on the average, after issuance of the "Notification of Decision." The twenty (20) day average elapsed time standard, however, is a guideline, not an inflexible rule. It may be exceeded by CHNAVPERS and CMC in such circumstances as severe hardship on the member, taking earned leave when the member is unable to sell it, infeasibility, such as when there is longer lead-time for properly vacating government quarters or arranging movement of household effects, and adverse effect on the service such as when it would preclude contact relief of officers in command or other key billets. These guidelines do not supercede the Uniform Retirement Date requirement of 5 U.S.C. 8301, but rather provide for reasonable exercise of the Secretary's authority in 10 U.S.C. 1221.

2167 PERMANENT LIMITED DUTY EXCEPTION TO CONTINUE ON ACTIVE DUTY MEMBERS OTHERWISE UNFIT FOR DUTY BECAUSE OF PHYSICAL DISABILITY

See enclosure (8) to this instruction.

2168 WAIVER OF DISABILITY RETIREMENT/SEPARATION

a. ***Members Qualified For Retirement For Other Reasons May Request Non-Disability Retirement/Separation.*** A member who meets all prerequisites for retirement or separation because of physical disability, but who is also qualified for retirement for other reasons, or transfer to the Fleet Reserve or Fleet Marine Corps Reserve, may request that he or she be separated for reasons other than disability.

(1) A member who wants non-disability retirement must submit a request to ASN(M&RA) in a timely manner prior to the effective date of his or her disability retirement, stating the reason for the request. The request shall be forwarded via CHNAVPERS or CMC, who will make a specific recommendation with supporting rationale.

(2) A member who wants non-disability transfer to the Fleet Reserve or the Fleet Marine Corps Reserve, must submit a Request for Transfer to the Fleet Reserve (NAVPERS 1830/1) or Fleet Marine Corps Reserve Application (Use Unit Diary). Along with the application, the member must forward a signed waiver of rights to a formal hearing and to disability pay under MILPERSMAN 3855180.9 or MARCORPSEPMAN (MCO P1900.16), Chapter 8, as appropriate, and request an effective date of not more than 60 days from date of application. A copy of the waiver is to be provided to the DIRNCPB for finalization of the member's case.

b. ***Authority To Waive Disability Retirement/Separation.*** At the request of the member, the DIRNCPB, is authorized to waive disability retirement/separation where consistent with the law and this enclosure.

2169 DEFERMENT OF MANDATORY RETIREMENT OR SEPARATION

If a member is pending mandatory separation or retirement, such retirement or separation may only be deferred if the member is hospitalized or a medical board report has been accepted by the President, PEB for disability evaluation processing. 10 U.S.C. 640 applies.

2170 - 2179 RESERVED

PART I - ASSIGNMENT OF RESPONSIBILITIES

2180 THE PHYSICAL EVALUATION BOARD

The PEB, subject to limitations contained in this instruction, shall act on behalf of the SECNAV in making determinations of fitness for duty, entitlement to benefits, disability ratings, and disposition of service members referred to it. Its composition and procedures are contained in enclosure (5) to this instruction.

2181 DIRECTOR, NAVAL COUNCIL OF PERSONNEL BOARDS

a. The DIRNCPB is assigned overall responsibility for the management, integrity and efficiency of the DES. In that regard, the DIRNCPB may issue internal instructions within the DES to further interpret, implement and govern the workings of the PEB.

b. As the Secretary's principal agent in overseeing the DES, the DIRNCPB may stop action on and refer any case to the ASN(M&RA) for resolution should the Director disagree with the disposition proposed by the PEB.

c. Any opinion of the JAG involving an issue of law shall be binding on the PEB and the DIRNCPB. If the JAG determines that there are insufficient facts to support a finding, the DIRNCPB may either accept the opinion and order appropriate action, return the case to a cognizant authority for more information, or appeal the decision to the SECNAV for final resolution.

d. The DIRNCPB shall:

(1) assign, supervise, and direct the activities of the President, PEB;

(2) provide budget, facilities, automated data processing, and personnel support to the PEB;

(3) establish billet/position assignment criteria for all elements within the DES;

(4) provide for the training of DES and Collateral Duty Counselors;

(5) provide for the training of line and medical officers assigned to the PEB;

(6) provide for quality assurance review of the PEB;

(7) submit recommendations to the ASN(M&RA) for legislative proposals, DOD matters, and changes to this instruction;

(8) maintain appropriate liaison with the Office of the Secretary of Defense and Veterans Administration (VA), with the CNO, the CHNAVPERS, the SURGEN, the Commander, Naval Military Personnel Command, the CMC, the CHBUMED, and the JAG in matters associated with the DES;

(9) inform the ASN (M&RA) of matters of interest;

(10) protect the privacy of individuals evaluated within the DES;

(11) maintain a system of records, including PEB records and correspondence files; and

(12) perform such other specific duties and exercise such other discretionary authority as elsewhere set forth in this instruction.

2182 CHIEF OF NAVAL PERSONNEL AND COMMANDANT OF THE MARINE CORPS

a. The CHNAVPERS and the CMC are assigned certain personnel management actions in support of naval disability evaluation policy.

b. The CHNAVPERS and the CMC may, for good and sufficient reason and with the consent of the member concerned, withdraw any case from the PEB. In such cases and if the member is to be retired or separated, the member need not pass a separation physical in order to be separated or retired.

c. The CHNAVPERS and the CMC shall:

(1) provide statements of naval service and access to fitness reports and performance evaluations for review by the PEB;

(2) take action on requests for continuance on active duty in a PLD status, authorize retention on PLD, and administer those personnel consistent with the guidance in enclosure (8) of this instruction;

(3) accomplish appropriate disposition of members whose disability evaluation has been completed (see 1012);

(4) withdraw from the DES cases of members who have been declared deserters or who are being processed for

administrative discharge for misconduct or pending disciplinary action which could result in a punitive discharge pending resolution of such action;

(5) provide counseling to members upon request regarding details of their ultimate disposition following disability evaluation;

(6) provide officers and enlisted personnel of requisite experience and judgement to serve in evaluation and counseling roles within the DES;

(7) maintain a list of not less than 4 alternate line members for service on the PEB;

(8) administer the TDRL as specified in enclosure (7) to this instruction;

(9) recommend to the ASN (M&RA) via the DIRNCPB appropriate changes to this instruction; and

(10) perform such other specific duties and exercise such other discretionary authority as elsewhere set forth in this instruction.

2183 COMMANDER, NAVAL RESERVE FORCES AND COMMANDANT OF THE MARINE CORPS (MPH-60)

The Commander, Naval Reserve Forces and CMC (Code MPH-60) shall provide to medical boards NOE's for inactive-duty reservists or advice that such has not been granted in accordance with SECNAVINST 1770.3 series.

2184 SURGEON GENERAL/CHIEF, BUREAU OF MEDICINE AND SURGERY

a. The SURGEN/CHBUMED is responsible for the efficiency of processing and overall quality of medical board reports prepared within the Department of the Navy. In addition, the SURGEN shall provide medical and medical personnel support to the DES, and advice to SECNAV and ASN(M&RA) upon request.

b. The SURGEN/CHBUMED shall:

(1) provide medical board reports to the PEB and further medical support as may be required by the DIRNCPB, President, PEB, CHNAVPERS, or CMC in support of the DES;

(2) establish medical board membership and procedural rules in compliance with this instruction, and professional medical guidance in accordance with accepted medical standards;

(3) establish and maintain a review of medical board reports to assure efficient, timely, complete, and competent reports;

(4) provide additional information as requested by the PEB;

(5) nominate Medical Corps officers of requisite education and experience to serve on the PEB;

(6) recommend to the ASN (M&RA) via the DIRNCPB appropriate changes to this instruction; and

(7) perform such other specific duties and exercise such other discretionary authority as elsewhere set forth in this instruction.

2185 JUDGE ADVOCATE GENERAL

a. The JAG shall provide legal resources to support the DES and take such other actions as directed by statute and this instruction.

b. The JAG shall:

(1) review for legal sufficiency, in accordance with 10 U.S.C. 5148, PEB determinations in which an officer is to be retired for disability;

(2) upon receipt of the name and social security number of each incompetent member accepted for disability evaluation by the PEB, advise the President, PEB without delay should the JAG be aware that the member has regained competency;

(3) as a matter of Secretarial policy, review for legal sufficiency, PEB final determinations in which:

(a) the member exercised the hearing right and a determination of misconduct is to be issued,

(b) the member had not been declared mentally incompetent upon acceptance by the PEB but the basis of unfitness is a mental impairment,

(c) the member petitions the DIRNCPB for relief regardless of whether or not relief is granted,

(d) the SECNAV, the DIRNCPB, or the President, PEB, requests a JAG review, and

(e) all flag and medical corps officer cases.

(4) return legally insufficient cases to the DIRNCPB for action in accordance with 2181c;

(5) provide legal personnel resources to support the DES;

(6) recommend to the ASN(M&RA) via the DIRNCPB appropriate changes to this instruction; and

(7) perform such other specific duties and exercise such other discretionary authority as elsewhere set forth in this instruction.

2186 SIGNATURE AUTHORITY

a. The President, PEB shall issue, on behalf of the SECNAV, the final Department of the Navy determination (Findings Letter) in routine disability cases.

b. The DIRNCPB shall issue, on behalf of the SECNAV, the final Department of the Navy determination in special interest cases and cases in which relief was granted on the basis of a Petition for Relief.

MEDICAL CONDITIONS AND PHYSICAL DEFECTS WHICH NORMALLY ARE CAUSE FOR REFERRAL TO THE PHYSICAL EVALUATION BOARD

TABLE OF CONTENTS

MEDICAL CONDITIONS AND PHYSICAL DEFECTS WHICH NORMALLY ARE CAUSE FOR REFERRAL TO THE PHYSICAL EVALUATION BOARD

A. GENERAL

1. This enclosure provides a listing of medical conditions and physical defects which normally are cause for referral to the Physical Evaluation Board (PEB). The list is not all inclusive, and is not to be taken as a mandate that possession of one or more of the listed conditions or physical defects means automatic unfitness and subsequent disability separation or retirement. The major objective of the list is to achieve uniform disposition of cases arising under the law. Notwithstanding the forgoing, and in recognition of the missions and roles of the Navy and Marine Corps, the Secretary of the Navy (SECNAV) may modify these guidelines to fit the needs of the naval service. Users of this instruction should submit proposed modifications to DIRNCPB.

2. In modifying these guidelines, the SECNAV will consider conditions and defects not listed in this enclosure which justify referral of an individual to the PEB because the conditions or defects, individually or in combination:

a. Significantly interfere with the reasonable fulfillment of the purpose of the individual's employment in the Navy or Marine Corps;

b. May seriously compromise the health or well-being of the individual if he or she were to remain in military service;

c. May prejudice the best interests of the government if the individual were to remain in the military service.

B. ABDOMEN AND GASTROINTESTINAL SYSTEM

1. Defects and Diseases

a. Esophageal

(1) Achalasia (cardiospasm) manifested by dysphagia not controlled by dilatation with frequent discomfort, or inability to maintain normal vigor and nutrition.

(2) Esophagitis, persistent and severe.

(3) Diverticulum of the esophagus of such a degree as to cause frequent regurgitation, obstruction, and weight loss, which does not respond to treatment.

(4) Stricture of the esophagus of such a degree as to require an essentially liquid diet, frequent dilation, and hospitalization, and which causes difficulty in maintaining weight and nutrition.

b. Amebic Abscess Residuals. Persistent abnormal liver function tests, and failure to maintain weight and normal vigor after appropriate treatment.

c. Cirrhosis of the Liver. Recurrent jaundice or ascites; or demonstrable esophageal varices or history of bleeding therefrom.

d. Gastritis. Severe, chronic gastritis with repeated symptoms requiring hospitalization and confirmed by gastroscopic examination.

e. Hepatitis, Chronic. When, after a reasonable time following the acute stage, symptoms persist, and there is objective evidence of impairment of liver function.

f. Hernia.

(1) Hiatus hernia, with severe symptoms not relieved by dietary or medical therapy, or bleeding is recurrent in spite of prescribed treatment.

(2) Other hernias, if operative repair is contraindicated for medical reasons, or when not amenable to surgical repair.

g. Ileitis, Regional.

h. Pancreatitis, Chronic. Frequent abdominal pain requiring repeated hospitalization, or steatorrhea, or disturbance of glucose metabolism requiring insulin.

i. Peritoneal Adhesions. Recurring episodes of intestinal obstruction characterized by abdominal colicky pain and vomiting, and requiring frequent admissions to the hospital.

j. Proctitis, Chronic. Moderate to severe symptoms of bleeding, or painful defecation, or tenesmus and diarrhea, with repeated admissions to the hospital.

k. Ulcer, Peptic, Duodenal, or Gastric. Repeated incapacitations or absences from duty because of recurrence of symptoms (pain, vomiting, or bleeding) in spite of good medical management, and supported by laboratory and X ray evidence of activity or severe deformity.

l. Ulcerative Colitis.

m. Rectum, Stricture of. Severe symptoms of obstruction characterized by intractable constipation, pain on defecation, difficult bowel movements requiring the regular use of laxatives or enemas, or requiring repeated hospitalization.

n. Anus. Impairment of sphincter control with fecal incontinence.

o. Familial Polyposis.

2. Surgery.

a. Colectomy, Partial. When more than mild symptoms of diarrhea remain.

b. Colostomy. When permanent.

c. Enterostomy. When permanent.

d. Gastrectomy.

(1) Total

(2) Subtotal, with or without vagotomy, or gastrojejunostomy or pyloroplasty with or without vagotomy, when in spite of good medical management, the individual experiences any of the following:

(a) Develops incapacitating dumping syndrome. (Postoperative symptoms such as a moderate feeling of fullness after eating, or the need to avoid or restrict the ingestion of high carbohydrate foods, or the need for a daily schedule for a number of small meals should not be confused with dumping syndrome.)

(b) Develops frequent episodes of incapacitating epigastric distress with characteristic circulatory symptoms or diarrhea.

(c) Continues to demonstrate significant weight loss. (Preoperative weight representative of obesity should not be taken as a reference point in making this assessment.)

e. Gastrostomy. When permanent.

f. Pancreatectomy. Except for partial pancreatectomy for a benign condition which does not result in moderate residual symptoms.

g. Pancreaticoduodenostomy, Pancreaticogastrostomy, Pancreaticojejunostomy.

h. Proctopexy, Proctoplasty, Proctorrhaphy, or Proctotomy. If fecal incontinence remains after appropriate treatment.

C. BLOOD AND BLOOD-FORMING TISSUE DISEASES

1. Anemia. Symptomatic.

2. Hemolytic Disease, Chronic. Symptomatic, or with recurrent crises.

3. Leukopenia, Chronic.

4. Polycythemia. Symptomatic.

5. Purpura and Other Bleeding Diseases.

6. Thromboembolic Disease.

7. Splenomegaly, Chronic.

8. Other Such Diseases. When response to therapy is unsatisfactory, or when therapy is such as to require prolonged, intensive medical supervision.

D. DENTAL

Diseases and abnormalities of the jaws or associated tissues when, following restorative surgery, there remain residuals which are incapacitating, or deformities which are severely disfiguring.

E. EARS AND HEARING

1. Ears.

a. Infections of the External Auditory Canal. Chronic and severe, resulting in thickening and excoriation of the canal, or chronic secondary infection requiring frequent and prolonged medical treatment.

b. Mastoiditis, Chronic. Constant drainage from the mastoid cavity, requiring frequent and prolonged medical care.

c. Mastoidectomy. Followed by chronic infection with constant or recurrent drainage requiring frequent or prolonged specialized medical care.

d. Meniere's Syndrome. Recurring attacks of sufficient frequency and severity as to require frequent or prolonged medical care.

e. Otitis Media. Moderate, chronic, supportive, resistant to treatment, and necessitating frequent or prolonged medical care.

2. Hearing. Ordinarily, a hearing defect is not sufficient reason for considering an individual unfit because of physical disability. When the unaided average loss in the better ear is 35 decibels ISO or more in the normal speech range (pure tone audiometric values at the 500, 1000, 2000 hertz), the individual will be evaluated at an audiology and speech center. Audiology specialists at the center will recommend referral to a Physical Evaluation Board (PEB) when appropriate. This recommendation may be based on the results of either pure tone audiometry or speech reception threshold and discrimination, whichever in the judgment of the specialists most accurately reflects the degree of the hearing loss.

F. ENDOCRINE AND METABOLIC CONDITIONS

1. Acromegaly.

2. Adrenal Hyperfunction. Not responding to therapy.

3. Adrenal Hypofunction. Requiring medication for control.

4. Diabetes Insipidus. Unless mild, with good response to treatment.

5. Diabetes Mellitus. When proven to require insulin.

6. Gout. With frequent acute exacerbations in spite of therapy, or with severe bone, joint, or kidney damage.

7. Hyperinsulinism. When caused by a malignant tumor, or when the condition is not readily controlled.

8. Hyperparathyroidism. When residuals or complications, such as renal disease or bony deformities, preclude the reasonable performance of military duty.

9. Hyperthyroidism. Severe symptoms which do not respond to treatment.

10. Hypoparathyroidism. With objective evidence and severe symptoms not controlled by maintenance therapy.

11. Osteomalacia. When residuals after therapy are of such degree or nature as to limit physical activity to a significant degree.

G. EXTREMITIES

1. Upper Extremities.

a. Amputations. Amputation of part or parts of an upper extremity which results in impairment equivalent to the loss of use of a hand.

b. Joint Ranges of Motion. Motion which does not equal or exceed the measurements listed below. Measurements must be made with a goniometer and conform to methods illustrated in Plate I.

(1) Shoulder:

(a) Forward elevation to 90°.

(b) Abduction to 90°.

(2) Elbow:

(a) Flexion to 100°.

(b) Extension to 45°.

(3) Chronic Dislocation. When not repairable or surgery is contraindicated.

MEASUREMENT OF ANKYLOSIS AND JOINT MOTION

Upper Extremities

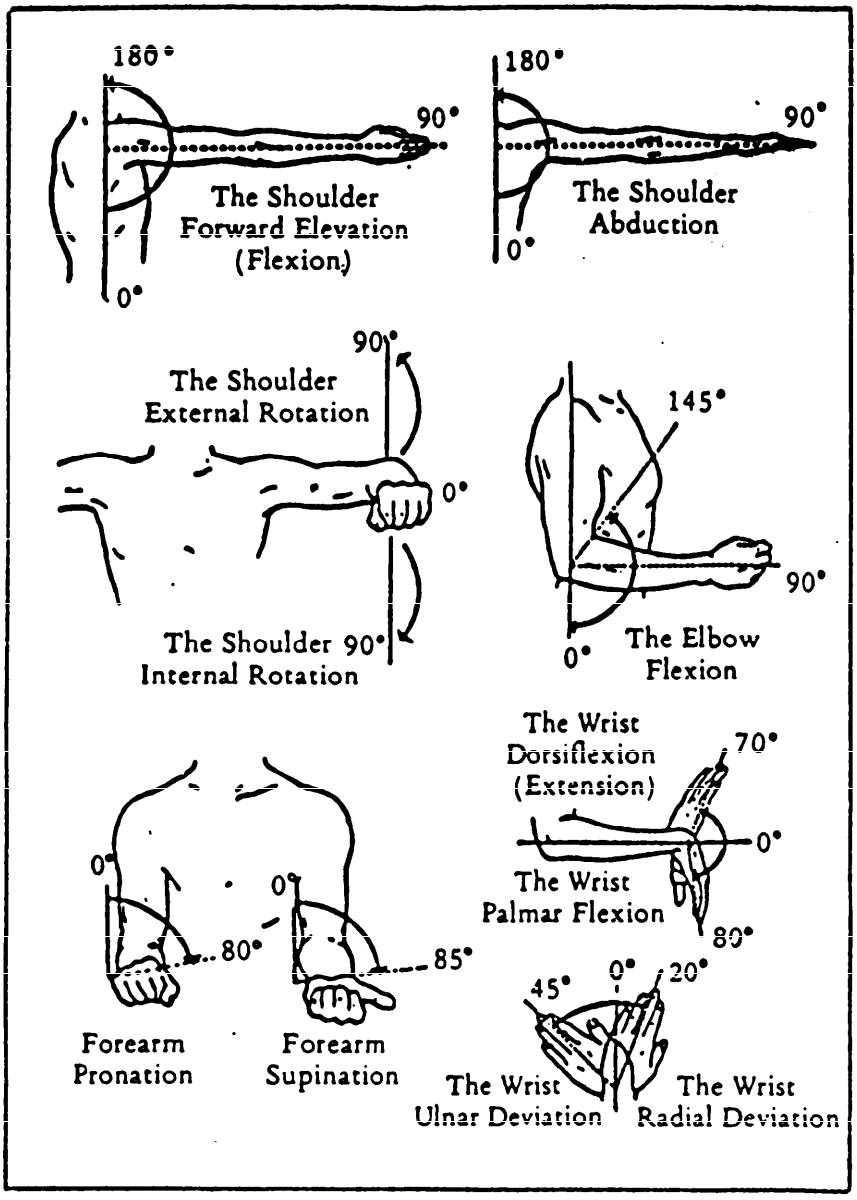

PLATE I

This plate provides a standardized description of ankylosis and joint motion measurement of the upper extremities. The anatomical position is considered as 0° with two major exceptions: (1) in measuring shoulder rotation, the arm is abducted to 90° and the elbow is flexed to 90° so that the forearm reflects the midpoint (0°) between internal and external rotation of the shoulder; and (2) in measuring pronation and supination, with the arm next to the body and the elbow flexed to 90°, the forearm is in mid-position (0°) between pronation and supination when the thumb is uppermost.

2. Lower Extremities.

a. Amputations.

(1) Loss of a toe or toes which precludes the ability to run or walk without a perceptible limp, or to engage in fairly strenuous jobs.

(2) Any loss greater than that specified above to include foot, leg, or thigh.

b. Feet.

(1) Hallux valgus. When moderately severe, with exostosis or rigidity and pronounced symptoms; or severe with arthritic changes.

(2) Pes Planus, Symptomatic. When more than moderate, with pronation on weight bearing that prevents the wearing of a military shoe, or when associated with vascular changes.

(3) Talipes Cavus. When moderately severe, with moderate discomfort on prolonged standing and walking, metatarsalgia, that prevents the wearing of a military shoe.

c. Internal Derangement of the Knee.

(1) Residual instability following remedial measures if more than mild in degree; or with recurring episodes of effusion, or locking, resulting in frequent incapacitation.

(2) If complicated by arthritis, see paragraph 3.a., below.

d. Joint Ranges of Motion. Motion which does not equal or exceed the measurements listed below. Measurements must be made with a goniometer and conform to the methods illustrated in Plate II.

(1) Hip:

(a) Flexion to 90°.

(b) Extension to 0°.

(2) Knee:

(a) Flexion to 90°.

(b) Extension to 15°.

e. Shortening of an Extremity. When shortening exceeds two inches.

MEASUREMENT OF ANKYLOSIS AND JOINT MOTION

Lower Extremities

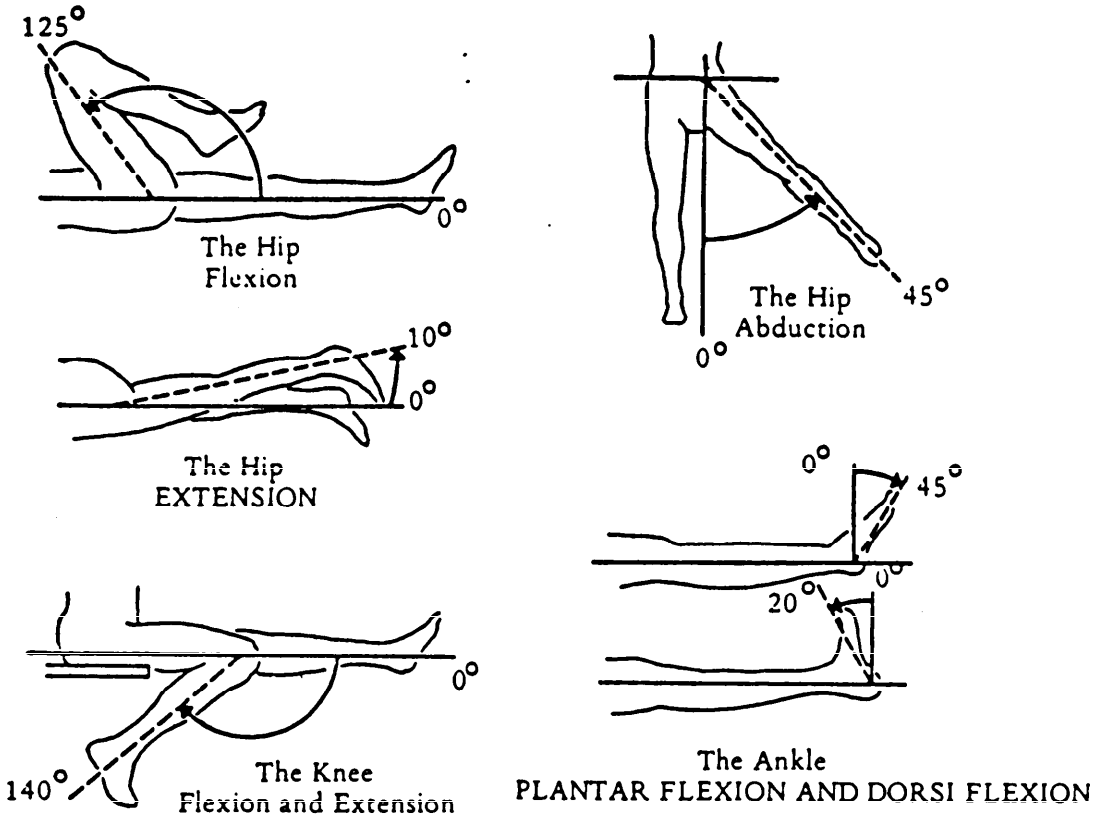

PLATE II

This plate provides a standardized description of ankylosis and joint motion measurement of the lower extremities. The anatomical position is considered as 0°.

noted that the zero percent rating does not preclude the award of

3. Miscellaneous.

a. Arthritis.

(1) Arthritis due to infection associated with persistent pain and marked loss of function, with X ray evidence, and documented history of recurrent incapacity.

(2) Arthritis due to trauma. When surgical treatment fails or is contraindicated and there is functional impairment of the involved joint so as to preclude the satisfactory performance of duty.

(3) Osteoarthritis. When severe symptoms are associated with impairment of function, supported by X ray evidence and documented history of recurrent incapacity for prolonged periods.

(4) Rheumatoid arthritis or rheumatoid myositis. If the history of repeated incapacitating episodes is supported by objective and subjective findings.

b. Chondromalacia or Osteochrondritis Dessicans. Severe, manifested by frequent joint effusion, more than moderate interference with function or with severe residuals from surgery.

c. Fractures.

(1) Malunion. When, after appropriate treatment, there is more than moderate malunion with marked deformity or there is more than moderate loss of function.

(2) Nonunion. When it persists after an appropriate healing period with more than moderate loss of function.

(3) Bone fusion defect. When manifested by more than moderate pain or loss of function.

(4) Callus, excessive, following fracture. When functional impairment precludes satisfactory performance of duty and the callus does not respond to adequate treatment.

d. Joints.

(1) Arthroplasty with severe pain, limitation of motion and limitation of function, joint prosthesis or total joint replacement.

(2) Bony or fibrous ankylosis with severe pain involving major joints or spinal segments, or ankylosis in unfavorable position, or ankylosis with marked loss of function.

(3) Contracture joint with marked loss of function and the condition is not remediable by surgery.

(4) Loose bodies within a joint with marked functional impairment complicated by arthritis to such a degree as to preclude favorable results of treatment.

e. Muscles. Flaccid paralysis, spastic paralysis, or loss of substance of one or more muscles producing loss of function that precludes satisfactory performance of duty.

f. Myotonia Congenita. Significantly symptomatic and precluding the satisfactory performance of duty.

g. Osteitis Deformans. Involvement of single or multiple bones with resultant deformities, or symptoms severely interfering with function.

h. Osteoarthropathy, Hypertrophic, Secondary. More than moderate pain present in one or multiple joints and with at least moderate loss of function.

i. Osteomyelitis, Chronic. Recurrent episodes not responsive to treatment, and involving the bone to a degree which interferes with stability and function.

j. Tendon Transplant. Unsatisfactory restoration of function, significantly interfering with the satisfactory performance of duty.

H. EYES

1. Diseases and Conditions.

a. Active Eye Diseases. Active eye disease, or any progressive organic disease regardless of the stage of activity, which is resistant to treatment and affects the distant visual acuity or visual field so that:

(1) Distant visual acuity does not meet the standard stated in paragraph 2. e., below, or

(2) The field of vision in the better eye is less than 20°.

b. Aphakia, Bilateral.

c. Chronic Congestive (Closed Angle) Glaucoma or Chronic Non-congestive (Open Angle) Glaucoma. If well established with demonstrable changes in the optic disk or visual fields, or not amenable to treatment.

d. Diseases and Infections of the Eye. When chronic, more than mildly symptomatic, progressive and resistant to treatment after a reasonable period.

e. Ocular Manifestations of Endocrine or Metabolic Disorders. Not disqualifying per se; however, residuals or complications, or the underlying disease may render a service member unfit.

f. Residuals or Complications of Injury. When progressive, or when reduced visual acuity or fields do not meet the criteria of paragraph 2. e. or f., below.

g. Retina, Detachment of.

(1) Unilateral Detachment.

(a) When visual acuity does not meet the standard of paragraph 2. e.

(b) When the visual field in the better eye is constricted to less than 20°.

(c) When uncorrectable diplopia exists.

(d) When detachment results from organic progressive disease or new growth, regardless of the condition of the better eye.

(2) Bilateral Detachment, regardless of etiology or results of corrective surgery.

2. Vision.

a. Aniseikonia. Subjective eye discomfort, neurologic symptoms, sensations of motion sickness and other gastrointestinal disturbances, functional disturbances and difficulties in form sense, and not corrected by iseikonic lenses.

b. Binocular Diplopia. Which is severe, constant, and in zone less than 20° from the primary position.

c. Hemianopsia. Of any type, if bilateral, permanent, and based on an organic defect. Those due to a functional neurosis and those due to transitory conditions, such as periodic migraine, are not normally considered to render an individual unfit.

d. Night Blindness. Of such a degree that the individual requires assistance in any travel at night.

e. Visual Acuity.

(1) When visual acuity cannot be corrected with spectacle lenses to at least: 20/60 in one eye and 20/60 in the other eye; or 20/50 in one eye and 20/80 in the other eye; or 20/40 in one eye and 20/100 in the other eye; or 20/30 in one eye and 20/200 in the other eye; or 20/20 in one eye and 20/300 in the other eye.

(2) When an eye has been enucleated, or

(3) When vision is correctable only by the use of contact lenses or other specified corrective devices (telescopic lenses, etc.).

f. Visual Fields. When the visual field in the better eye is constricted to less than 20 .

I. GENITOURINARY SYSTEM

1. Genitourinary Conditions.

a. Cystitis. When complications or residuals of treatment themselves preclude satisfactory performance of duty.

b. Dysmenorrhea. Symptomatic, not amenable to treatment, and incapacitating.

c. Endometriosis. Symptomatic and incapacitating.

d. Hypospadias. Accompanied by chronic infection of the genitourinary tract or instances where the urine is voided in such a manner as to soil clothes or surroundings, and the condition is not amenable to treatment.

e. Incontinence of Urine. Due to disease or defect not amenable to treatment.

f. Kidney.

(1) Calculus in kidney, symptomatic and incapacitating, significantly interfering with the satisfactory performance of duty.

(2) Congenital renal anomaly, resulting in frequent or recurring infections, or when there is evidence of obstructive uropathy not responding to medical or surgical treatment.

(3) Cystic kidney (polycystic kidney), if the focus of frequent infection or when renal function or is impaired.

(4) Hydronephrosis, more than mild and causing continuous or frequent symptoms not responding to medical or surgical treatment.

(5) Hypoplasia of the kidney, associated with elevated blood pressure, frequent infections, or reduction in renal function.

(6) Nephritis, chronic, with renal functional impairment.

(7) Nephrosis, other than mild, with renal functional impairment.

(8) Pyelonephritis or pyelitis, chronic, which has not responded to medical or surgical treatment, with evidence of persistent hypertension or reduction in renal function.

g. Menopausal Syndrome, Physiologic or Artificial. With mental and constitutional symptoms significantly interfering with the satisfactory performance of duty.

owing instructions: VASRD in accordance with the follo

h. Strictures of the Urethra or Ureter. Severe, not amenable to treatment, and significantly interfering with the satisfactory performance of duty.

i. Urethritis, Chronic. Not responsive to treatment and necessitating frequent absences from duty.

2. Genitourinary and Gynecological Surgery.

a. Cystectomy.

b. Cystoplasty. If reconstruction is unsatisfactory or if residual urine persists in excess of 50cc or if refractory symptomatic infection persists that significantly interferes with the satisfactory performance of duty.

c. Nephrectomy. When, after treatment, there is infection or pathologic change (anatomic or functional) in the remaining kidney.

d. Nephrostomy. If drainage persists.

e. Oophorectomy. When following treatment and convalescent period, there remain incapacitating mental or constitutional symptoms significantly interfering with the satisfactory performance of duty.

f. Penis, Amputation of. When urine is voided in such a manner as to soil clothing or surroundings, or result in severe mental symptoms.

g. Pyelostomy. If drainage persists.

h. Ureterocolostomy.

i. Ureterocystostomy. When both ureters are markedly dilated with irreversible changes.

j. Ureteroileostomy, Cutaneous.

k. Ureteroplasty.

(1) When unilateral procedure is unsuccessful and nephrectomy is necessary, consider on the basis of the standard for a nephrectomy.

(2) When bilateral, evaluate residual obstruction or hydronephrosis and consider unfitness on the basis of the residuals involved.

l. Ureterosigmoidostomy.

m. Ureterostomy. External or cutaneous.

n. Urethrostomy. When a satisfactory urethra cannot be restored.

J. HEAD

Loss of substance of the skull with or without prosthetic replacement when accompanied by moderate residual signs and symptoms.

K. HEART AND VASCULAR SYSTEM

1. Heart.

a. Arteriosclerotic Disease. Associated with congestive heart failure, repeated anginal attacks or objective evidence of myocardial infarction.

b. Atrial Fibrillation and Flutter. Associated with organic heart disease, or if not adequately controlled by medication.

c. Endocarditis. Resulting in myocardial insufficiency.

d. Heart Block. Associated with other signs and symptoms of organic heart disease or syncope (Stokes-Adams syndrome).

e. Myocarditis and Degeneration of the Myocardium. Myocardial damage producing symptoms such as fatigue, palpitation and dyspnea with ordinary physical activity.

f. Paroxysmal Ventricular Tachycardia.

g. Paroxysmal Supraventricular Tachycardia. If associated with organic heart disease or if not adequately controlled by medication.

h. Pericarditis.

(1) Chronic constrictive pericarditis unless successful surgery has been performed.

(2) Chronic serous pericarditis.

i. Rheumatic Valvulitis. Associated with cardiac insufficiency producing symptoms such as fatigue, palpitation, dyspnea or anginal-type pain with ordinary physical activity.

j. Ventricular Premature Contractions. Frequent or continuous attacks, whether or not associated with organic heart disease, such as to interfere with the satisfactory performance of duty.

2. Vascular System.

a. Arteriosclerosis Obliterans. When any of the following pertain:

(1) Intermittent claudication of sufficient severity to produce pain and inability to complete a walk of 200 yards or less on level ground at 112 steps per minute without a rest, or

(2) Objective evidence of arterial disease with symptoms of claudication, ischemic rest pain or with gangrenous or ulcerative skin changes of a permanent degree in the distal extremity, or

(3) Involvement of more than one organ system or anatomic region (the lower extremities are considered one region for this purpose) with symptoms of arterial insufficiency.

b. Congenital Anomalies. Coarctation of aorta and other congenital anomalies of the cardiovascular system unless satisfactorily treated by surgical correction.

c. Aneurysms. Aneurysm of any vessel not correctable by surgery and producing limiting symptomatic conditions which preclude satisfactory performance of duty. Aneurysm corrected by surgery but with residual limiting symptomatic conditions which preclude satisfactory performance of duty. Satisfactory performance of duty is precluded because of underlying recurring or progressive disease producing pain, dyspnea or similar symptomatic limiting conditions.

d. Reconstructive Surgery, Including Grafts. When:

(1) The individual is being evaluated for separation or retirement and the observation period following surgery is deemed inadequate to determine the patient's ability to perform duty as evidenced by a cardiovascular surgical consultation.

(2) Prosthetic devices are attached to or implanted in the heart.

(3) Unproven procedures have been accomplished and the patient is unable to satisfactorily perform duty or cannot be returned to duty under circumstances permitting close medical supervision of his activities.

e. Periarteritis Nodosa.

f. Chronic Venous Insufficiency (Postphlebitic Syndrome). When symptomatic despite elastic support, significantly interfering with the satisfactory performance of duty.

g. Raynaud's Phenomenon. Manifested by trophic changes of the involved parts characterized by scarring of the skin, or ulceration.

h. Thromboangiitis Obliterans. Intermittent claudication of sufficient severity to produce pain and inability to complete a walk of 200 yards or less on level ground at 112 steps per minute without rest, or other equally significant complications.

i. Thrombophlebitis. When repeated attacks requiring treatment are of such frequency as to interfere with the satisfactory performance of duty.

j. Varicose Veins. Severe and symptomatic despite therapy, significantly interfering with the satisfactory performance of duty.

3. Miscellaneous Vascular Conditions.

a. Hypertensive Cardiovascular Disease and Hypertensive Vascular Disease.

(1) Diastolic pressure consistently more than 110 millimeters of mercury following an adequate period of therapy on an ambulatory status, or

(2) Any documented history of hypertension regardless of the pressure values if associated with one or more of the following:

(a) More than minimal demonstrable changes in the brain.

(b) Heart disease related to the hypertension.

(c) Kidney involvement, manifested by unequivocal impairment of renal function.

(d) Grade III (Keith-Wagner-Barker) changes in the fundi.

(e) Multiple drug therapy with the requirement for an inordinate amount of medical supervision that significantly interferes with the satisfactory performance of duty.

b. Residual of Surgery of the Heart, Pericardium or Vascular System. When surgery results in inability of the individual to perform duties without significant discomfort or dyspnea.

L. LUNGS AND CHEST WALL

1. Tuberculous Conditions. See pertinant Service Pubications.

a. Pulmonary Tuberculosis (to Include Tuberculous Pleurisy).

b. Tuberculous Lesions.

2. Nontuberculous Conditions. These conditions must be evaluated in terms of pulmonary function; clinically by exertional tolerance, and in the laboratory by measurements which reflect exertional or altitudinal tolerance. Recurrent infections and symptoms such as cough and pain should be considered when they limit a member's activity.

a. Atelectasis. Of a functionally significant degree.

b. Bronchial Asthma. Associated with more than mild irreversible reduction in pulmonary function (ventilatory tests) and symptoms of such severity as to interfere with the satisfactory performance of duty.

c. Bronchiectasis. Cylindrical or saccular type which is moderately symptomatic, with productive cough at frequent intervals throughout the day, or with moderate other associated lung disease to include recurrent pneumonia, or with residuals or complications which require repeated hospitalization.

7. Adrenal Hyperfunction. Not responsive to therapy

d. Bronchitis. With chronic, severe cough, or with moderate associated asthma or emphysema producing dyspnea at rest or on slight exertion, or with residuals or complications which require repeated hospitalization.

e. Cystic Disease of the Lung and Bullous Emphysema. If producing significant functional impairment.

f. Hemopneumothorax, Hemothorax, Pyopneumothorax or Chronic Fibrotic Pleurisy. More than moderate restriction of respiratory excursions and chest deformity, or weakness and fatigability on slight exertion.

g. Histoplasmosis and Other Pulmonary Mycoses. With significant residuals or failure to respond to treatment.

h. Pneumothorax, Spontaneous. Repeated episodes of pneumothorax not correctable by surgery.

i. Pneumoconiosis. Severe with dyspnea on mild exertion.

j. Pulmonary Emphysema. Resulting in dyspnea on mild exertion and supported by demonstrable moderate reduction in pulmonary function or when present, to at least a moderate degree, as a complication of any other respiratory condition.

k. Pulmonary Fibrosis. Linear fibrosis or fibrocalcific residuals of such a degree as to cause dyspnea on mild exertion and demonstrable moderate reduction in pulmonary function.

l. Pulmonary Sarcoidosis. Complicated by demonstrable moderate reduction in pulmonary function.

m. Stenosis, Bronchus. Severe stenosis associated with repeated attacks of bronchopulmonary infections requiring frequent hospitalization.

3. Surgery of Lungs and Chest. If surgery results in impairment of pulmonary function to a moderate degree or more, as demonstrated by ventilatory tests.

M. MOUTH, NOSE, PHARYNX, LARYNX, AND TRACHEA

1. Larynx.

a. Paralysis of the Larynx. Characterized by vocal cord paralysis seriously interfering with speech or adequate airway.

b. Stenosis of the Larynx. Of a degree causing respiratory embarrassment.

c. Obstructive Edema of Glottis. If recurrent.

2. Nose, Pharynx, Trachea.

a. Rhinitis. Atrophic rhinitis characterized by bilateral atrophy of nasal mucous membrane with severe crusting, concomitant severe headaches, and foul, fetid odor.

b. Sinusitis. Severe and chronic which is suppurative, complicated by polyps, or does not respond to treatment.

c. Trachea. Stenosis of a degree causing respiratory embarrassment.

N. NEUROLOGICAL DISORDERS

1. Amyotrophic Lateral Sclerosis.

2. Chorea. Chronic and progressive.

3. Freidreich's Ataxia.

4. Hepatolenticular Degeneration.

5. Migraine. Manifested by frequent incapacitating attacks or attacks which last for several consecutive days, and unrelieved by treatment.

6. Multiple Sclerosis.

7. Myasthenia Gravis.

8. Myelopathic Muscular Atrophy. Includes severe residuals of poliomyelitis.

9. Narcolepsy. When attacks are not controlled by medication.

10. Paralysis Agitans.

11. Peripheral Nerve Conditions.

a. Neuralgia. When symptoms are severe, persistent, and not responsive to treatment.

b. Neuritis. When manifested by more than moderate, permanent functional impairment.

c. Paralysis due to Peripheral Nerve Injury. When manifested by more than moderate, permanent functional impairment.

12. Progressive Muscular Atrophy.

13. Syringomyelia.

14. Transverse Myelopathy.

15. General Neurological Disorders. Any other neurological condition, regardless of etiology, when, after adequate treatment, residual symptoms such as persistent severe headaches, weakness or paralysis of important muscle groups, deformity, incoordination, pain or sensory disturbance, disturbance of consciousness, speech or mental defects, or personality changes definitely interfere with the performance of duty.

O. PSYCHOSES, PSYCHONEUROSES, AND PERSONALITY DISORDERS

1. Psychoses. One or more psychotic episodes, existing symptoms or residuals thereof, or a recent history of psychotic reaction sufficient to interfere with performance of duty or social adjustment.

2. Psychoneuroses. Persistent or recurrent symptoms requiring hospitalization or the need for continuing psychiatric support. (Incapacity because of neurosis must be distinguished from weakness of motivation or underlying personality disorder.)

3. Personality Disorders.

a. Personality Disorders. Personality disorders are considered to render an individual administratively unfit rather than unfit because of physical disability. Interference with performance of effective duty will be dealt with through appropriate administrative channels.

b. Transient Personality Disruptions. Transient personality disruptions of a nonpsychotic nature or situational maladjustments due to acute or special stress are generally self-limited conditions and do not render an individual unfit because of physical disability.

4. Disorders of Intelligence. Individuals determined to have primary mental deficiency or special learning defect(s) of such degree as to interfere with the satisfactory performance of duty are administratively unfit or unsuitable and should be recommended for administrative separation.

P. SKIN AND CELLULAR TISSUES

Conditions listed below are cause for referral to a Physical Evaluation Board (PEB) when they are severe, unresponsive to treatment, and interfering with the satisfactory performance of duty or wearing of the uniform or use of military equipment.

1. Acne. Severe, unresponsive to treatment, and interfering with the satisfactory performance of duty or wearing of the uniform or use of military equipment.

2. Atopic Dermatitis. More than moderate or requiring frequent hospitalization.

3. Cysts and Tumors. See section S., below.

4. Dermatitis Herpetiformis. Which fails to respond to therapy.

5. Eczema, Chronic. Regardless of type, when there is more than minimal involvement or when there are repeated exacerbations in spite of continuing treatment.

6. Elephantiasis or Chronic Lymphedema. Not responsive to treatment.

7. Epidermolysis Bullosa.

8. Erythema Multiforme. More than moderate and chronic or recurrent.

9. Exfoliative Dermatitis. Chronic.

10. Fungus Infections, Superficial. If not responsive to therapy and resulting in frequent absences from duty.

11. Hidradenitis, Suppurative, and Folliculitis Decalvans.

12. Hyperhydrosis. Of the hands or feet, when severe or complicated by a dermatitis or infection, either fungal or bacterial, and not responsive to treatment.

13. Leukemia Cutis and Mycosis Fungoides.

14. Lichen Planus. Generalized and not responsive to treatment.

15. Lupus Erythematosus. Chronic discoid variety with extensive involvement or when the condition does not respond to treatment.

16. Neurofibromatosis. If repulsive in appearance or when associated with manifestations of other organ system involvement.

17. Parapsoriasis. Extensive and not controlled by treatment.

18. Pemphigus. Not responsive to treatment, and with moderate constitutional or systemic symptoms.

19. Psoriasis. Extensive and not controllable by treatment.

20. Radiodermatitis. If resulting in malignant degeneration at a site not amenable to treatment.

21. Scars and Keloids. So extensive or adherent that they seriously interfere with the function of an extremity or body area involved, or if repulsive in appearance.

22. Tuberculosis of the Skin. If not responsive to therapy.

23. Ulcers of the Skin. Not responsive to treatment after an appropriate period of time or if resulting in frequent absences from duty.

24. Urticaria. Chronic, severe and not amenable to treatment.

25. Other Skin Disorders. If chronic, or of a nature which requires frequent medical care or interferes with the satisfactory performance of military duty.

Q. SPINE, SCAPULAE, RIBS, AND SACROILIAC JOINTS (See also subsection G.3., above)

1. Congenital Anomalies. Presenting functional impairment of a degree sufficient to preclude the satisfactory performance of duty.

2. Coxa Vara. More than moderate with pain, deformity, and arthritic changes.

3. Herniation of Nucleus Pulposus. When symptoms and associated objective findings are of such a degree as to require repeated hospitalization or frequent absences from duty.

4. Deviation or Curvature of Spine. More than moderate, or interfering with function, or causing unmilitary appearance.

R. SYSTEMIC DISEASES

1. Amyloidosis. Generalized.

2. Dermatomyositis.

3. Human Immunodeficiency Virus (HIV). Service members confirmed to be HIV antibody positive and who demonstrate immunologic deficiency, neurologic involvement, decreased capacity to respond to infection, or progressive clinical or laboratory abnormalities associated with HIV, which include Acquired Immune Deficiency Syndrome (AIDS).

4. Leprosy. Any type.

5. Lupus Erythematosus, Disseminated, Chronic.

6. Myasthenia Gravis.

7. Mycoses. Active, not responsive to therapy or requiring prolonged treatment, or when complicated by residuals that in themselves render a service member unfit.

8. Panniculitis. Relapsing, febrile, nodular.

9. Porphyria.

10. Sarcoidosis. Progressive, with severe or multiple organ involvement and not responsive to therapy.

11. Scleroderma. Generalized or of the linear type, which seriously interferes with the function of an extremity or body area involved.

12. Tuberculosis, Generalized. Not responsive to therapy.

S. TUMORS AND MALIGNANT DISEASES

1. Malignant Neoplasms. Malignant neoplasms or residuals of treatment which are of such a nature as to preclude satisfactory performance of duty.

2. Neoplastic Conditions of Lymphoid and Blood-Forming Tissues. Normally grounds for referral to the Physical Evaluation Board (PEB).

3. Benign Neoplasms. When the condition prevents the satisfactory performance of duty and is not remediable, or a remedial operation is refused.

T. VENEREAL DISEASES

1. Symptomatic Neurosyphilis. In any form.

2. Complications or Residuals of Venereal Diseases. When chronicity or degree of severity is such that the individual is incapable of performing useful duty.

SPECIAL INSTRUCTIONS AND EXPLANATORY NOTES, VASRD

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SPECIAL INSTRUCTIONS AND EXPLANATORY NOTES, VASRD

5000, Osteomyelitis.

a. Note (1) following Code 5000 in the VASRD may appear to be ambiguous in its instructions concerning application of the amputation rule. It means that in rating active osteomyelitis of any part, the amputation of which would be ratable at less than 20 percent (ordinarily the minimum rating for active osteomyelitis), a rating of 10 percent may be assigned. This constitutes disregard of the amputation rule in those instances where the rating for amputation would be 0 percent. Example: A case of active osteomyelitis of the little finger distal to the proximal interphalangeal joint may be rated at 10 percent even though amputation at that level is ratable at 0 percent (Note (b), page 33R and VA Code 5227). However, a ratable disability exists only so long as distal phalanx with its active osteomyelitis remains.

b. Osteomyelitis should not be considered cured simply because saucerization or sequestrectomy has been performed. Cures sometimes may be effected, however, by removal or radical resection of the bone.

c. Under Note (2), a rating may be assigned only when the disease is active clinically or by X ray.

d. Osteomyelitis extending into a major peripheral joint will not be rated higher than the elective amputation level that would remove the involved joint.

5002, Rheumatoid Arthritis. A distinction is made between active disease and chronic residuals. VASRD Codes 5002, 5004 to 5009 and 5017 will be rated by the same criteria and the VASRD guidance on page 28-2R.

a. As an active process: Ratings assigned under these codes will be based primarily on clinical and laboratory evidence. X ray changes are not required.

b. For chronic residuals: Ratings will be based on limitation of motion in accordance with the VASRD Code 5200 series. X ray evidence, alone, will not support a rating in any of these conditions.

c. The bilateral factor will apply as appropriate.

d. These ratings under VASRD Code 5200 will not be combined with ratings for active process.

5003, Arthritis, Hypertrophic.

a. This is one of the more frequently encountered conditions in the field of disability evaluation, and one of the more difficult to adjudicate. The difficulty stems from the fact that it occurs in some degree in all individuals beyond age 40, and from its wide variability in rate of progression and severity of manifestations. Symptomatology is frequently disproportionate to demonstrable pathology, and in this area the effect of such intangibles as motivation and other psychogenic components must be considered.

b. Ratings under this code can be assigned in either of the following situations: In the absence of limitation of motion with only X ray evidence of

involvement of two or more major joints or two or more joint groups; or, when there is objective evidence of some limitation of motion combined with X ray findings of arthritis of one or more major joints or minor groups.

c. When the limitation of motion of the involved specific joint or joints is of sufficient degree, the rating assigned will be under one of the appropriate limitation of motion codes (the 5200 or 9900 series of codes of the VASRD).

d. When a rating is assigned under a limitation of motion code (5200 series), it will not be combined with a rating under code 5003 for other joint involvement on the basis of X ray findings.

e. It is emphasized that separate rating of specific joints or joint groups are not intended for application to the fluctuating types of impairments which tend to improve or disappear.

5010, Arthritis Due to Direct Trauma. When an affected joint merits a rating higher than 10 percent, the analogy appropriate to the impairment must be used. Diagnosis alone is insufficient for the 10 percent rating. With an affected joint, the assignment of a 10 percent rating requires the presence of objective evidence of limitation of motion in addition to X ray findings.

5054, Total Hip Replacement. Convalescent ratings and ratings for specified periods of time will not be used. In uncomplicated cases the member is usually ambulatory and disposition is possible approximately one month after the procedure has been performed. TDRL, with an appropriate rating, is usually required prior to permanent disposition.

5055, Knee Replacement (Prosthesis).

a. The provision that a member will be rated at 100 percent for one year following implantation of the prosthesis does not apply.

b. If, after maximum hospital benefit has been achieved, a member remains unfit, rate for residual impairment. If the member's condition has not stabilized for rating purposes, placing on the TDRL should be considered.

c. The VASRD footnote to Code 5055 does not apply.

5126-5151, Multiple Finger Disability. The difficulty frequently encountered in rating multiple finger amputations at different levels has been simplified by a convenient method of computation. By the assignment of graded values for each finger according to the level at which it was amputated, or for the severity of its ankylosis, it is possible to calculate an "average amputation level" for the fingers involved. (See Plate III.) The disability may then be rated in accordance with the notes of instruction in the VASRD. The method is as follows:

Step One: Determine the grade value of each of the affected fingers from the chart below.

Defect of individual finger	Rated as	Grade Value
Amputation through distal phalanx[1] or distal joint. (Other than negligible tip losses.)	Favorable ankylosis (Note c, page 33-R VASRD).	Grade 1
Amputation through middle phalanx.	Unfavorable ankylosis (Note b).	Grade 2
Amputation through proximal phalanx or proximal I-P joint.	Amputation (Note a).	Grade 3
Amputation of entire digit with amputation or resection of more than one half of metacarpal.	Single finger amputation with metacarpal resection (Codes 5152-5156).	Grade 4

Step Two: Find the average grade value by dividing the total of values for the individual fingers by the number of fingers involved. Round off fractions to the nearest whole number.

Step Three: From the second and third columns of the chart above, determine the appropriate category of the defects (favorable ankylosis, unfavorable ankylosis, amputation, etc.) for the average grade of the disabled hand. The proper code number and rating can then be determined within the category according to the number of fingers involved. Example: Service member has had his thumb amputated through the distal phalanx, the long and ring finger through the middle phalanges, and the entire small finger, including more than half of the metacarpal.

Grade value for the thumb	2
Grade value for the long finger	2
Grade value for the ring finger	2
Grade value for the little finger, including more than half of metacarpal	4
Total value	10

[1]For rating purposes the thumb will be regarded as having no distal phalanx. Amputation of the thumb at the interphalangeal joint or distal thereto will be graded as unfavorable ankylosis (Grade 2). The VASRD is ambiguous in this regard, no such distinction being made in the notes following 5151 of the VASRD, yet VA Code 5152 shows 20 percent for application at the distal joint or distal thereto, and VA Code 5224 also shows 20 percent for application to unfavorable ankylosis of the thumb.

$$\frac{\text{Total Value}}{\text{Number of fingers involved}} = \text{Ratable Value}$$

$$\frac{10}{4} = 2\frac{1}{2} = 3$$

Referring to the chart above, Grade 3 is ratable as amputation. Amputation of four fingers - thumb, index, ring and little - is ratable under VA Code 5130 at 70 percent (for major hand) or 60 percent (for minor hand).

5171, Amputation of Great Toe. Must be through the proximal phalanx to warrant a 10 percent rating.

5200-5295, Ratings Involving Joint Motion.

a. In the measurement and assessment of joint motion it is incumbent upon the medical examiner to utilize the standardized descriptions portrayed in Plates I and II, enclosure 3, of this Directive.

b. When the reported limited range of motion falls between two points specified in the VASRD, the higher percentage of disability will apply.

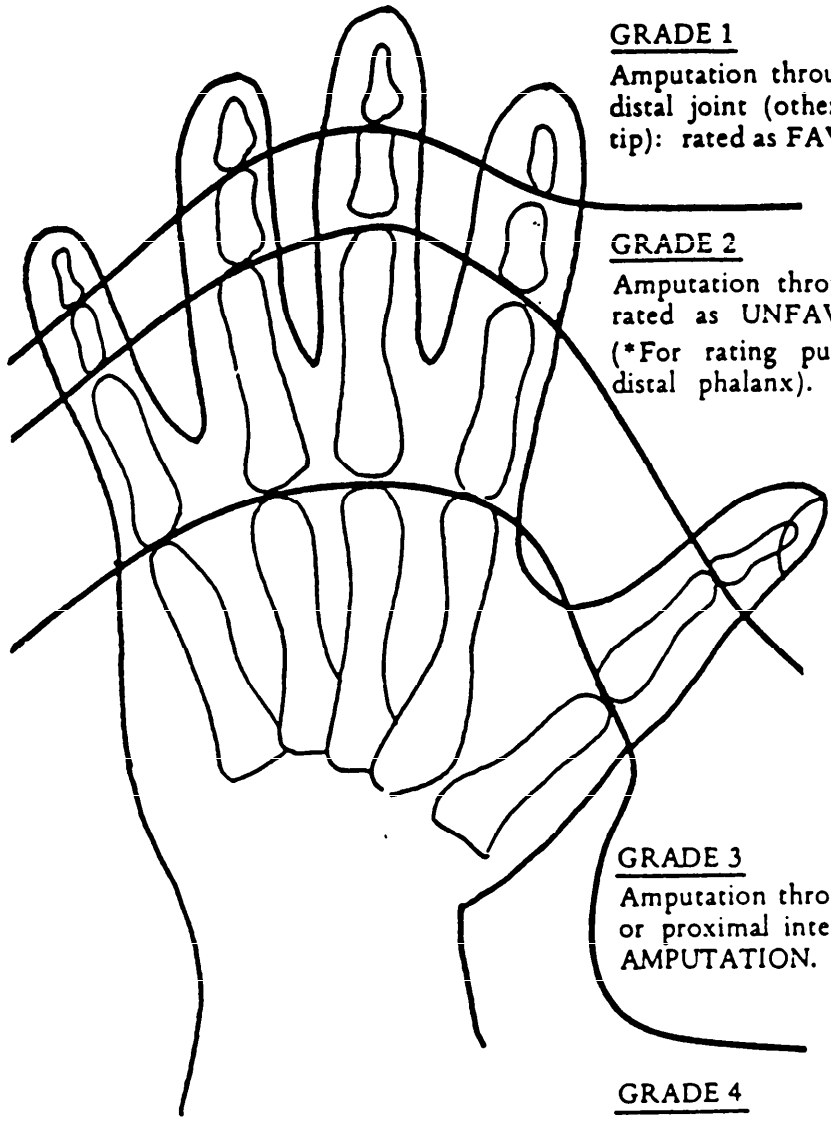
c. Ankylosis is the absence of motion of a joint. In application, it is complete fixation, or a limitation of motion so severe in degree that the amount of movement is negligible.

d. The inclination, usually encountered when an analogous rating of an extremity is necessary, to use an analogy such as "other impairment of" elbow or knee (Code 5209 or 5257), is to be avoided when the actual impairment is a limitation of motion of the joint, properly ratable as limitation of flexion or extension of the part distal to the joint.

e. In some cases of limitation or of other abnormal joint motion, the basic cause is injury to muscle or tendon rather than to bone or joint. A careful distinction must be made for appropriate rating.

In the Notification of Decision letter, direct the RO shall

RATING OF MULTIPLE FINGER DISABILITIES



GRADE 1

Amputation through the distal phalanx or distal joint (other than loss of negligible tip): rated as FAVORABLE ANKYLOSIS.

GRADE 2

Amputation through the middle phalanx* rated as UNFAVORABLE ANKYLOSIS (*For rating purposes, thumb has NO distal phalanx).

GRADE 3

Amputation through the proximal phalanx or proximal interphalangeal joint rated as AMPUTATION.

GRADE 4

Amputation or resection of metacarpal bones, more than one-half of the bone lost.

PLATE III

(See the VASRD for principles on the "Musculo-Skeletal System" in connection with rating problems resulting from injuries to extremities.)

5205-5208, Absence or Limitation of Motion of Elbow and Forearm.

a. 5205. Where a rating for unfavorable ankylosis is not based upon the additional finding of complete loss of supination or pronation, it may be combined with 5213 subject to the amputation rule. If there is less than complete loss of supination or pronation, 5205 may be combined with 5213 but not to exceed the rating for unfavorable ankylosis under 5205.

b. 5206-5208. These will combine with 5213, but not to exceed the rate for unfavorable ankylosis under 5205.

5209-5212, Other Impairments of Elbow, Radius and Ulna. These codes are not to be combined with Code 5213.

5213, Impairment of Pronation and Supination.

a. Limitation of either pronation or supination may be rated, but never both in the same arm. Full pronation is the position of the hand flat on the table. Full supination is the position of the hand palm up In rating limitation of pronation the "arc" is from full supination to full pronation. The "middle" of the arc is the position of hand, palm vertical to the table.

b. There is an inconsistency in the schedule for the ratings for the major arm, where "hand fixed near the middle of the arc or moderate pronation" is rated 20 percent, while limitation of pronation with "motion lost beyond middle of arc" is rated 30 percent. Cases in which this conflict arises shall be resolved in the member's favor.

c. "Motion lost beyond last quarter of arc" means that the forearm can be pronated from 0 through 45 , but no further. (See paragraph 71 of the VASRD and the illustration of forearm pronation, Plate I, enclosure (3) of this Directive.)

5214, Wrist, Ankylosis of.

a. Ankylosis of the wrist in 10 degrees to 30 degrees of dorsiflexion will be considered favorable and rated accordingly.

b. Wrist replacement prosthesis. Rate according to functional impairment.

5251-5253, Limitation of Extension and Flexion of the Thigh. Ratings allowable under these codes may not realistically reflect the degree of disability because of basic or related disability of the sacroiliac region, pelvis, acetabulum, or head of femur. More appropriate ratings may be selected from VA Code 5250 (hip, ankylosis of), VA Code 5255 (femur, impairment of, with hip disability) or VA Code 5294 (sacroiliac injury). (See paragraph 67 of the VA Schedule for comments on pelvic skeletal fractures.)

5255-5262, Defects of Long Bones of the Lower Extremity. Apply these codes (malunion with adjacent joint disability) when appropriate to avoid multiple codes and ratings, but, when both a proximal and a distal major joint are

affected, an additional rating may be indicated for the less disabled joint. These codes are often appropriate when joint surfaces are included in the fracture lines.

5270 Ankle prosthesis may be rated under this number. Maximum disability is 40 percent in keeping with amputation rule. Place on TDRL if appropriate and rate on residual disability after stabilization.

5272, Subastragalar or Tarsal Joint Ankylosis. The assignment of a rating under this code is proper only in the absence of motion of the subtalar joint which is manifested by the lack of inversion or eversion of the foot.

5285-5295, Spine.

a. The joints of the cervical, dorsal and lumbar segments of the spine and the combination of sacroiliac and lumbosacral joints are each regarded as a group of minor joints. Each is ratable as one major joint only when separate ratings are justified by X ray evidence of pathology in addition to limitation of motion or muscle spasm or other evidence of painful motion of the individual segments involved. Otherwise, rate as for osteoarthritis.

b. Arthritic impingement on nerve roots which produces degeneration of the nerve function or frequent, prolonged attacks of neuralgia, as distinguished from brief episodes of radiating pain, should be rated as one entity under codes for neurological conditions, unless limitation of spinal motion justifies an additional rating.

5285, Residuals of Fracture of Vertebra.

a. The need for a member to wear some type of brace for the restriction of lumbar or dorsolumbar movement is not analogous to the requirements for a jury mast type of neck brace for abnormal mobility following cervical fracture. Where there is no cord involvement, the disability should be rated in accordance with the degree of limited motion with brace in place.

b. When there is significant demonstrable (objective findings and X ray) deformity of one or more vertebral bodies, 10 percent is to be added to, not combined with, the rating for each spinal segment in which such deformity appears. Instructions contained in the italicized note under Code 5285 (VASRD), pertaining to ratings for ankylosis and limited motion, apply also to the addition of 10 percent for demonstrable deformity of a vertebral body. The 10 percent is to be added to the rating for the segment before that rating is combined with the others. Example: If, as residuals of vertebral fractures, a

member were to have moderate limitation of motion in cervical and lumbar segments, and substantial deformities of the bodies of C5, D12, and L1, the rating would be:

Line:			
	1.	Code 5285-5290	20%
	2.	Demonstrable deformity of C5----------	10
	3.	(Subtotal)	30
	4.	Code 5285-5292	20%
	5.	Demonstrable deformity of L1	10
	6.	(Subtotal)	30
	7.	Combining lines 3 and 6	51%

(Since there is no associated finding, there can be no addition because of deformity in D12)

c. The addition to the rating of 10 percent for demonstrable deformity of a vertebral body is intended only for a substantial degree of deformity. It should not be added in those instances of insignificant deformity such as slight shortening of the anterior vertical dimension of the body. Where a successful spinal fusion has been performed because of the deformity of a vertebral body, the potential of the deformity for increasing the degree of disability has usually been removed or so far reduced that the addition of 10 percent to the rating is not justified.

5287-5289, Ankylosis of a Spinal Segment.

a. A rating for ankylosis requires a condition of absent or negligible range of motion for the whole segment. Ankylosis of part of a segment still may leave some degree of useful motion for the segment as a whole, so that the appropriate rating would be for limitation of motion.

b. Separate ratings for ankylosis of segments of the spine shall not exceed 60 percent when combined, if the combined effect of such separate disabilities is complete ankylosis of the spine at a favorable angle.

5296, Skull.

a. Diagnostic burr holes and other bony defects are ratable only when there is loss of both inner and outer tables of bone. Where there is more than one, add the areas of each and rate the total. The following may be helpful as a reference in determining appropriate ratings:

1 centimeter - 0.3937 inch

1 inch - 2.54 centimeters

1 square centimeter = 0.1550 square inch

2 square centimeters = 0.3100 square inch

3 square centimeters = 0.4650 square inch

Diameter of Circle	Area of Circle	
	Square centimeters	Square inches
1 centimeter	0.7854	0.1216
2 centimeters	3.1416	0.4869
3 centimeters	7.0686	1.0956
4 centimeters	12.5664	1.9478
1/2 inch		0.19635
1 inch		0.7854
1 1/2 inches		1.76715
2 inches		3.1416

b. Considering total bone loss for multiple areas, such as in trephining, the rating should not be assigned based upon "coin measurement" but on the basis of the aggregate area loss in terms of square inches. Attention is directed to the fact that approximately 50 percent of diagnostic burr holes heal within five years.

c. Loss of part of the skull is not ratable if the defect has been successfully repaired with a prosthetic plate. Residual neurological deficit or cosmetic deformity will be rated separately if appropriate. Burr holes, to be ratable, must be contiguous.

d. Areas of loss where bone regeneration has taken place are not ratable. If regeneration has partially closed the defect, only the remaining area of loss is to be rated.

e. The rating problem created by the disparity in the criteria for area measurement (50-cent piece = 1.140 square inches; 25-cent piece = 0.716 square inches) shall be resolved in favor of the member.

5297, Removal of Ribs.

a. For removal of ribs, the VASRD requires the complete removal from the vertebral angle to the costo-cartilaginous junction. Removals to a lesser degree are rated as rib resections.

b. The presence of certain conditions precludes the assignment of an additional rating under Code 5297; exceptions are allowed in specific situations. Notes (1) and (2) under this Code in VASRD provide pertinent guidance.

5299-52xx, Dupuytren's Contracture. Rate on the basis of limitation of motion of finger movement.

5301-5326, Muscle Injuries.

a. There are specific limits to the permissible combination of ratings of muscle injuries in the same anatomical segment, and of muscle injuries in which the movements of a single joint are affected. (See paragraphs 55 (page 20-R) and 72 (page 45-3R), VASRD.)

b. When a joint is ankylosed, the muscles acting on that joint may not also be rated.

6000-6092, Diseases of the Eye.

a. The adjudication of disabilities of the visual apparatus is often extremely difficult. In some cases, involving a combination of defects, it may be possible to arrive at an equitable percentage rating through literal application of the terms of the VA Schedule. The complexity of these conditions does not permit the construction of a schedule that is adequate for the infinite variety of defects and the resulting types and degrees of impairment which may occur. Here the concept of "visual efficiency" may be helpful. Visual efficiency is the product of the interdependent relationship of all the functions of the ocular apparatus, of which the three principal ones are central visual acuity, field of vision, and muscle function. Since the estimation of visual efficiency, as such, is not provided by the VA Schedule as a means of determining degree of disability it is useful only to help create a mental image of the service member's real handicap so that an equitable rating in terms of the schedule may be recommended.

b. The VA Schedule makes several references to the effect that the combined rating for disabilities of the same eye is not to exceed the amount for total loss of vision of that eye, unless there is an enucleation or a serious cosmetic defect added to the total loss of vision. Accordingly, where there is a cosmetic defect, even though limited to the eye with the visual loss, representing a separate and distinct entity, namely, facial disfigurement, a separate rating of 10, 30, or 50 percent depending on the facts in the case is permitted under Code 7800 to be combined with the rating for the visual loss or rating for enucleation.

c. It is mandatory that visual field defects be examined and reported in accordance with the method prescribed in paragraph 76 of the VA Schedule. Attach copies of the records showing visual field defects to the medical board report. Make and report muscle function examinations in accordance with paragraph 77 of the VA Schedule.

6000-6009, Conditions Involving Structures of the Globe.

a. Rate disabilities resulting from these conditions, as follows:

Step One:

(1) Rate impairment of visual acuity.
(2) Rate impairment of field of vision.
(3) Rate active pathology, if present, at 10 percent.
(4) Combine the rating in (1) or (2) above, whichever is higher, with (3).

Step Two. Rate pain, rest requirement and/or episodic incapacity from 10 to 100 percent. This rating, when only one eye is involved, is not necessarily limited to the 30 percent rating for total loss of vision of one eye, since pain or rest requirements may be incapacitating in any degree, including total. Assign this rating under the code which covers the basic condition (i.e., Code 6000 through Code 6009). Analogy to another code number is not required. It is an estimate based as nearly as possible upon the actual impairment of social and industrial function which is imposed by the pain experienced, the time lost because of the requirement for rest, the frequency of incapacitating episodes, or any combination thereof. Do not combine an additional rating of 10 percent during continuance of active pathology with this rating.

Step Three. Award the higher of the two ratings resulting from Steps One and Two, above.

b. Retained Foreign Body. Rate as active pathology under Step One, if in a critical area or not stabilized, or rate for residuals under Step Two.

6013, Glaucoma, Simple, Primary, Noncongestive. The minimum rating is applicable if the diagnosis is satisfactorily established, whether or not visual acuity or field of vision has been affected. The rating is for the disease, rather than for functional impairment of an individual organ, and applied whether the disease process involves one or both eyes.

6081, Scotoma, Pathological. The rating is 10 percent whether unilateral or bilateral. Combine, of course, with other ratings, with the reservation that the rating for one eye may not exceed 30 percent, unless there is enucleation or a serious cosmetic defect. Central scotoma cannot, however, be combined with central visual loss.

6090-6092, Diplopia. To determine rating, substitute the 6090 reading for the visual acuity of the poorer eye and read percentage in the 6071-6079 series. If vision is same in both eyes, pick one as an arbitrary choice. Example: Member has 20/50 vision bilaterally with diplopia in 20 of 20 rectangles; rate as 5/200 one eye and 20/50 other eye under 6073 at 40 percent.

6200, Otitis Media, Suppurative, Chronic. The 10 percent rating during the continuance of the suppurative process is intended as compensation for the existence of active pathology rather than for additional impairment of the individual sense organ. This rating is therefore limited to 10 percent, whether the pathological process is unilateral or bilateral.

6207, Deformity of Auricle. If associated with disfiguring scars of face or head, Code 7800 may be appropriate. Apply the rule against pyramiding.

6300-6317, Systemic Conditions. Convalescent ratings of 6 or 12 months provided under certain of these codes are not to be applied by the Military Departments.

6309, Rheumatic Fever. Rate residual impairments under the appropriate code. When a member is determined to be unfit due to recurrence of disease, and there is no residual functional impairment, consider use of the 0 percent rating.

6350, Lupus Erythematosus, Systemic. Rate connective tissue diseases under this code.

6519, Aphonia, Organic. Impairment of ability to speak may be ratable under more than one code, depending upon the cause and severity of the impairment. In such instances, award the highest applicable rating. This instruction does not apply to speech impairment due to loss of whole or part of the tongue; rate under Code 7202.

6600-6603, Diseases of the Trachea and Bronchi, and Pulmonary Emphysema. Pulmonary function studies must be included in clinical records to support the diagnosis and degree of severity in these pulmonary diseases.

6725-6728, Inactive Pulmonary Tuberculosis.

a. Determining Inactivity. Pulmonary tuberculosis is considered to be inactive:

(1) When these criteria are met: No symptoms of tuberculous origin. Serial roentgenograms must show stability or very slow shrinkage of the tuberculous lesion. No evidence of cavity. Sputum or gastric washings show negative on culture or guinea pig inoculation. These conditions shall have existed at least six months.

(2) When inactivity established is by evaluation. This is usually, but not always, at the time the patient is declared to have received the maximum benefits of hospitalization.

(3) Six months after surgical excision of an active lesion during which time there shall have been no evidence of tuberculous activity in any body system, or upon discharge from the medical treatment facility, whichever is later.

b. Chemotherapy. Treatment by medication is frequently continued beyond the date when the disease becomes inactive according to the above criteria. Do not confuse the ending date of such treatment schedule with that of a beginning of the inactive status.

c. Rating Residuals. A rating of 100 percent for one year after the date of attaining inactivity will not be used. After the condition becomes inactive, rate residuals (e.g., impairment of pulmonary function, surgical removal or resection of a part, etc.) under the appropriate VA Code, subject to the limitations contained in paragraph 96a, of the VA Schedule, except for the reference to Public Law 90-493.

6800-6801, 6802, 6811, 6812, and 6818, Non-Tuberculous Diseases. Appropriate pulmonary function studies must be included in clinical records to support the diagnosis and degree of severity of any of these pulmonary diseases.

6814, Pneumothorax. Do not apply the "100 percent for six months" rating. Rate the underlying condition, if known, or consider rating by analogy to emphysema (Code 6603) or pneumoconiosis (Code 6802).

6815, Pneumonectomy. The 60 percent rating is applied for pneumonectomy, regardless of the number of ribs removed at the time of the operation. If, at a later date, thoracoplasty becomes necessary for obliteration of space within the thorax, the rating for pneumonectomy will be combined with a rating for removal of ribs. Note (2) which follows Code 5297 in VASRD provides rating guidance in a case of this type.

6816, Lobectomy. An entire lobe other than the right middle lobe must be removed for the defect to be ratable. Excision of the right middle lobe, segmental resection or lingulectomies are not ratable.

6899, Sarcoidosis. This disease is difficult to rate because of its unpredictable course and the number of body systems that may be involved. It is usually rated by analogy to coccidiomycosis (Code 6821) or pneumoconiosis (Code 6802) when the predominant manifestation is in the lungs. With other organ or more generalized involvement and manifestations such as lymphadenopathy, transient joint pains and occasional febrile episodes, assignment of the Disability Code 6399 and rating under Code 6316 may be appropriate.

7000 series, Cardiovascular Disease.

a. To avoid pyramiding, give only one rating for all manifestations of cardiovascular-renal disease when, according to accepted medical principles, the conditions are etiologically related. For example, hypertension, arteriosclerosis, and end-organ nephropathy are so closely associated that they may be regarded as one clinical entity. Rate the disability under the code representing the predominant signs and symptoms. Occasionally the related manifestations in another body system will be so severe as to increase the member's overall impairment to the point that the next higher percentage under the selected code will be justified. The note in the VASRD under Code 7507 is pertinent in this respect.

b. Rate valvular heart disease, when not of arteriosclerotic or hypertensive origin, as rheumatic heart disease, Code 7000.

7000, Rheumatic Heart Disease.

a. Assumption of the existence, prior to service, of a ratable degree of rheumatic heart disease is sometimes justified even though its presence was not previously recorded. Such an assumption, of course, will depend upon its compatibility with the interpretation of medical history and findings in the light of accepted medical principles. A stenotic valvular lesion, discovered early in military service, is an example of such a condition.

b. A "definitely" enlarged heart is one in which there is positive evidence of enlargement beyond the doubtful or borderline enlargement that is sometimes reported when the presence of enlargement is uncertain. Voltage criteria alone are not acceptable as electrocardiographic evidence of definite enlargement.

c. The 100 percent rating for active rheumatic heart disease for six months is not applicable.

d. Following valvulotomy or other corrective cardiovascular procedures, rate as discussed in 7005-7006e., below.

7005-7006, Arteriosclerotic Heart Disease, Myocardial Infarction.

a. Do not combine a rating for arteriosclerotic heart disease with one for hypertensive heart or hypertensive vascular disease (Code 7007 or 7101).

b. A rating of 100 percent under this code solely on the basis of the acute attack occurring within a six month period will not be applied.

c. In assigning percentages under these codes the criteria are as follows:

(1) The 100 percent rating. Following a myocardial infarction in which complications are so severe (i.e., intractable angina or intractable congestive heart failure) as to generally confine the individual to his home or comparable environment.

(2) The 60 percent rating. Following a myocardial infarction with substantiated repeated attacks of angina pectoris at rest or with normal activity. Also, substantiated repeated attacks of angina pectoris without antecedent myocardial infarction. More than light manual labor is precluded. The term "substantiated" as it is used here means the existence of a clinical and/or medical history, or other documentation, which tends to support the diagnosis. Cases forwarded with such diagnosis which do not contain supporting documentation, and which are marginal with respect to disability, will be returned by the adjudicative or review agencies to the appropriate medical authority for inclusion or preparation of such documentation.

(3) The 30 percent rating. Following a myocardial infarction manifested by a definite clinical history and expected laboratory evidence and/or characteristic electrocardiographic changes; or electrocardiographic evidence which is diagnostic of a previous myocardial infarction without continuing symptoms indicative of complications of arteriosclerotic heart disease. Also, angina pectoris where ordinary activity does not cause frequent pain, but where strenuous activity is precluded.

d. When an infarction or other acute conditions evaluated under these codes has occurred within approximately six months preceding evaluation or when the member's condition does not appear to have stabilized sufficiently to permit evaluation, place on the Temporary Disability Retired List (TDRL) and remove as soon as clinically stabilized.

e. Injuries, surgical procedures:

(1) Wounds, retained fragments or surgical procedures that disrupt the integrity of the myocardium or the conduction system, are rated for residual impairments raised to the next higher level.

(2) Ratings for heart injuries may be assigned in conjunction with disabilities rated as residuals of pleural injuries under VASRD Code 6818. Since these ratings are for separate injuries, ratings under both codes will not be considered pyramiding.

(3) Coronary bypass procedures, valve reconstruction or prosthesis, pacemakers and other significant procedures must be individually evaluated as the case merits. Place a member who is found unfit, following one of these procedures, on the TDRL with a minimum rating of 60 percent, if retired within six months of surgery. On removal from the TDRL, if still considered unfit because of physical disability, the rating assigned will be for residual impairment raised to the next higher level, with the exception of coronary bypass procedures, which ordinarily will be rated on residuals alone. In all such conditions the minimum residual impairment will be rated as 30 percent.

f. Definition of terms, as used in VASRD:

(1) "Ordinary manual labor" includes work not involving sustained heavy energy expenditure, and includes most skilled laborers, mechanics, and drivers.

(2) "Strictly sedentary employment" involves low energy expenditure and minimal body movement.

7007-7101, Hypertensive Heart Disease and Hypertensive Vascular Disease.

a. Obtain blood pressure reading, to be used in determining disability rating percentages, under normal circumstances and during usual activities. When antihypertensive medication is required for control, base the rating on the pressures obtained during usual activities, while under medication. It is emphasized that hypertension brought under control through optimum conditions (that is, during hospitalization under a regimen of medication and enforced rest) will not be used as a basis for evaluation, unless it is established that such control continues upon resumption of normal activity. Similarly, readings obtained during periods when indicated medication is withheld for purposes of medical observation, diagnostic study, etc., are not used as the basis for evaluation. A minimum of 10 readings taken on at least 5 days, on treatment, and under conditions as close as possible to normal duty performance, will be necessary. Also, correlate blood pressure levels with other evidence of end organ change, such as eyeground, neurologic, etc. It should be appreciated that the member, while in a hospital status, may be engaged in activities which for adjudicative purposes, are considered as unrestricted and comparable to "outside of the hospital environment." For example, he is ambulatory to the mess hall, receives weekend passes, engages in ward housekeeping duties. The level of hypertension is not to be determined by an average of all readings, but rather the predominant readings are to be the basis for determination of the level of hypertension.

b. When a combination of 7007 or 7101 exists with 7005, rate the individual under the code that most accurately reflects the disability. The presence of stigmata of hypertensive disease does not warrant rating at a higher level, unless there is clinically significant secondary organ involvement, such as renal impairment. When significant changes are present, consider raising the rating one step.

c. Careful evaluation is necessary in making the frequently tenuous distinction between hypertensive heart disease and hypertensive vascular disease, especially for the minor degrees of severity. Generally, to justify the 30 percent rating for hypertensive heart disease, all of the criteria

skull is not ratable if the defect has been ... loss of part of the

mentioned in the VASRD for that rating shall be met. "Definite enlargement of the heart" means certain left venticular hypertrophy by ECG criteria, other than voltage alone, with allowance for T-wave changes which may reflect medication more than pressure. The X ray appearance of the heart is deceptive in concentric hypertrophy, but must be at least consistent with that diagnosis.

7015, 7016, 7017, 7110, Surgical Procedures Associated with AV Block, Heart Valve Replacement, Aneurisms. Convalescent ratings and ratings for specified periods of time following surgery do not apply. Rate on the basis of functional impairment. However, maximum ratings do apply.

7114-7117, Peripheral Vascular Disease.

a. Consider the symptoms and signs of each of these conditions as manifestations of a systemic disease entity, wherein bilateral involvement of extremities is natural and expected. They are distinct from local mechanisms affecting peripheral circulation (for example, varicose veins or phlebitis) in which bilateral involvement is more nearly equivalent to coincidental duplication of the disease, rather than its direct extension.

b. When manifestations are limited to the extremities, base the percentage of disability upon the most severely affected extremity. Use the rating of that extremity as the total percentage, unless each of the two or more extremities separately meets the requirements for evaluation in excess of 20 percent. In the latter case, 10 percent only will be added to (not combined with) the evaluation for the more severely affected extremity, except where the disease has resulted in amputation. When both upper and lower extremities are involved, apply the above procedure to the upper extremities, then to the lower extremities. These ratings will be combined if each group has a total rating in excess of 20 percent.

c. Apply the bilateral factor in all cases of an amputation of one extremity with any compensable degree of disability of the other extremity.

d. Do not combine a peripheral vascular disease rating of 20 percent or less with any other peripheral vascular disease rating.

e. Peripheral vascular disease rating chart for Codes 7114 through 7117:

One extremity involved:	Combined rating
20	20
40	40
60	60
Two extremities, not paired (one arm and one leg):	
20 and 20	20
40 and 20	40
40 and 40	60

60 and 20	60
60 and 40	80
60 and 60	80

Two paired extremities, (two arms or two legs):

20 and 20	20
40 and 20	40
40 and 40 (40+10)	50
60 and 20	60
60 and 40 (60+10)	70
60 and 60 (60+10)	70

Three extremities involved:

Paired extremities:	Other	Combined rating
20 and 20	20	20
20 and 20	40	40
20 and 20	60	60
40 and 20	20	40
40 and 20	40	60
40 and 20	60	80
40 and 40	20	50
40 and 40	40	70
40 and 40	60	80
60 and 40	20	70
60 and 40	40	80
60 and 40	60	90
60 and 60	20	70
60 and 60	40	80
60 and 60	60	90

All extremities involved: Paired extremities:	Paired extremities	Combined rating
20 and 20	20 and 20	20
40 and 20	20 and 20	40
60 and 20	20 and 20	60
40 and 40	20 and 20	50
40 and 20	40 and 20	60
40 and 40	40 and 20	70
40 and 40	40 and 40	80
60 and 40	40 and 40	90
60 and 40	60 and 40	90
60 and 60	40 and 40	90
60 and 60	60 and 40	90
60 and 60	60 and 60	90

7307, Gastritis, Hypertrophic. Identification by gastroscopic examination is required to establish this diagnosis.

7308, Postgastrectomy Syndrome. In evaluating and rating, take care to differentiate between nondisabling symptoms or minor discomfort which sometimes result from overindulgence, such as that experienced from overeating by a person without a gastrectomy, and discomfort symptomatic of a true postgastrectomy syndrome. Circulatory symptoms, even though mild or intermittent, or comparable symptoms such as a need for rest regularly after meals are indicative of disability which may be a basis for rating.

7328-7329, Intestinal Resections. Where portions of both intestines have been removed, rate under the code which is most representative of the clinical manifestations.

7332-7336, Ano-Rectal Conditions. Pilonidal cyst or sinus is primarily a disorder of ectoderm and shall be rated as a skin condition, except when an active process is present when it shall be rated by analogy to Code 5000.

7338, Hernia, Inguinal. If correctible, hernia is not ratable even though operation is refused, unless complicated by circumstances contra-indicating surgery, such as poor muscular or fascial structure, senility, psychosis, or serious disease which would interfere with healing or be aggravated by surgery, and the presence of other disabilities so serious or advanced that herniorrhaphy would serve no useful purpose.

7345, Hepatitis, Infectious.

a. Acute Infectious Hepatitis may be associated with "A", "B", or variant antigens and will usually resolve without residual impairment at the time liver function tests return to normal.

b. Chronic Persistent Hepatitis is a condition exhibiting minimally disturbed histology and liver function tests. It causes no, or minimal, persistent disability or progression and rating for residuals is seldom justified. However, placement on the TDRL may be appropriate when the clinical and laboratory course, particularly in the presence of persistent antigenemia, indicate a need for continued observation to rule out chronic active hepatitis. This problem is not always resolved by liver biopsy and both time and supporting evidence may be needed.

c. Chronic Active Hepatitis is a serious, frequently progressive condition that may or may not readily be associated with a demonstrable antigen. Since the course of the disease is often difficult to predict, placement on the TDRL may be appropriate prior to permanent disposition.

d. Other forms of inflammatory liver disease will be rated by analogy to infectious hepatitis or to other specific VASRD codes if applicable.

7347, Pancreatitis. Rate diabetes mellitus, if present, separately.

7500-7531, The Genitourinary System. Sterility and impotence are not ratable entities. Anatomical loss of procreative organs will not be rated.

7600 Gynecological Conditions. Anatomical loss of procreative organs will not be rated.

7524, 7617, 7618, 7619 Procreative Organs. Do not rate loss of procreative organs unless there are significant disqualifying residuals.

7703, Leukemia. If the use of chemotherapeutic agents is required, rate the same as leukemia requiring irradiation or transfusion.

7706, Splenectomy. Do not rate separately. Rate the residuals, if any, of the basic condition.

7709, Lymphogranulomatosis (Hodgkin's Disease). Cases in remission with minimal residuals may not be unfitting. Staging is the basis for clinical management of Hodgkin's Disease under treatment. Rating and disposition may be carried out according to the following guide:

Stage	(Stage A) Rating	(Stage B) Rating	Disposition (if unfit)
I	30	60	TDRL
II	30	60	TDRL
III	60	--	TDRL
III	--	100	TDRL
IV	100	100	TDRL

7714, Sickle-Cell Anemia. The VASRD rates all the manifestations of sickle-cell disease and its variants. Individuals with the more severe hemoglobinopathies are not acceptable for entry into the military services and appropriate policies concerning line of duty and service aggravation apply.

7801, Scars, Burns, Third Degree. These instructions supplement the criteria in the VASRD to permit a realistic rating of actual impairment of function:

a. Rate third degree burn scars, which cause limitation of function of underlying structure, by analogy to other codes which reflect the functional impairment.

b. Rate unsuccessful healed or grafted areas according to Code 7801. Footnotes to code 7801 in the VASRD apply.

c. Rate successfully grafted third degree burn areas as second degree burns under Code 7802. The footnote to code 7802 in the VASRD applies.

d. In calculating burn area, the following may be of assistance:

Average 70 kgm (150 lb) male body surface = $1.7M^2$
2636 in^2 = 18.3 ft^2
1 $meter^2$ = 39.37 inches
1 $meter^2$ = 1550.6 $inches^2$

Also use the diagram and Conversion Table in Plate IV on page 5-1-21 of this attachment.

7802, Scars, Burns, Second Degree. VA Code 7802 limits rating to 10 percent of second degree burns affecting an area or areas approximately one square foot. When there are widely separated areas and each area is approximately one square foot or more, 10 percent may be assigned for each scar.

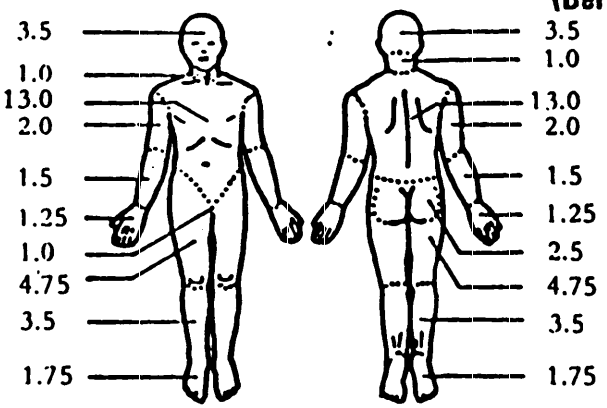
7804, Scars, Superficial, Tender and Painful. This rating of 10 percent may be assigned whenever the requirements are met for the area of involvement even though the rating may exceed the amputation rating, but only if the amputation rating is 0 percent. Do not combine a rating assigned for a scar under these circumstances, with any other rating for disability which involves the same area or digit.

7809, Lupus Erythematosus. This applies to the localized (discoid) type involving only the skin. Rate systemic lupus erythematosus, and the other so-called collagen diseases, under VA Code 6350.

7913, Diabetes Mellitus.

a. The severity of each case is to be individualized, taking into consideration complications, age of the member, and ease or difficulty in the control of blood sugar levels. By established practice, "large" insulin dosage has come to be regarded as "more than 40 units daily."

* ESTIMATION OF BODY SURFACE AREA
(Berkow)



The diagram at the left provides the basic scheme for estimation of body surface area The table below is for convenient conversion to actual surface area measurement, based upon application to the average 70 kgm. man with a body surface area of 2,636 sq. in. (18.3 sq. ft.).

Body Surface	Percent of body surface	Area	
		Square Inches	Square Feet
Anterior or posterior head	3.5	92	0.64
Anterior or posterior neck	1.0	26	.18
Anterior or posterior trunk	13.0	343	2.38
Anterior or posterior arm	2.0	53	.37
Anterior or posterior forearm	1.5	40	.27
Dorsal or palmar hand & fingers	1.25	33	.23
Buttock	2.5	66	.46
Genitalis	1.0	26	.18
Anterior or posterior thigh	4.75	125	.87
Anterior or posterior calf	3.5	92	.64
Dorsal foot or sole, incl toes	1.75	46	.32

PLATE IV

This may be used as a general guide, but not as the determining factor in assigning percentage ratings. It is quite possible for a member whose average insulin dosage is 30 to 35 units, but with unstable control requiring frequent hospital observation to be more disabled in fact than one on 45 units with steady blood sugar levels on a regimen of normal activity.

b. Care must be taken that ratings reflect the severity of the diabetes, as such, and that undue importance is not given to early or questionable complications. This is particularly true in considering ratings of 60 percent or above. In most instances, a lower rating shall be given with complications, such as vascular insufficiency, visual defects, pruritis and neuropathies, rated separately. The presence of early or questionable complications in otherwise less than severe diabetes mellitus does not automatically warrant a higher rating.

8000-8046, Organic Diseases of the Central Nervous System. Careful correlation of the footnote under Code 8046 in the VASRD with the italicized introduction to Codes 8000-8046 should enable boards to select the proper rating approach. In some of these conditions, the minimum rating may be awarded on the basis of the diagnosis alone, whether or not there are residuals. In others, the minimum rating may be awarded only if there are residuals. If the latter have neither residuals capable of objective verification nor subjective residuals which are credible, consistent with the disease, and are not more likely attributable to other diseases, the condition should be ratable at 0 percent.

8007-8009, Brain Vessels. Do not apply the six month convalescent rating. In many of these cases, the danger of disastrous recurrences justifies a rating of residuals sufficiently liberal to provide temporary retirement and subsequent reevaluations.

8017, 8018, 8023-8025, Degenerative Disorders of the Central Nervous System. Combined ratings may be assigned under these codes with the bilateral factor added.

8205-8412, Diseases of the Cranial Nerves. Notice the provision for combined ratings under these codes when there is bilateral involvement, but without addition of a bilateral factor.

8510-8730, Diseases of the Peripheral Nerves. In cases where the rating is made on residuals, observe the general principle of adjudicating on the basis of impairment of function rather than on anatomical diagnosis. For example, a complete paralysis of the circumflex nerve of the major extremity carries a 50-percent rating under VA Code 8518. In many cases, however, abduction of the arm when the circumflex nerve is paralyzed occurs by virtue of other muscles taking over the function of the paralyzed muscles. To warrant the 50-percent rating, the member's residual loss of function must actually include all the defects listed under VA Code 8518. When other muscles have, in fact, taken over the function of the circumflex-innervated deltoid, the residual loss of function is properly ratable under VA Code 5201, Limitation of Arm Motion or 5303, muscle injury, Group III, whichever best reflects the predominant impairment. Rate cases of paralysis of the common peroneal nerve with foot drop, VA Code 8521, in terms of loss of function, rather than topographically. Amputation below the knee, VA Code 5165, is ratable at 40 percent. In order to warrant a similar rating for peroneal palsies, there must be sufficiently

severe symptoms, such as trophic and circulatory changes and other concomitants to make the functional impairment reasonably equivalent to actual loss of the foot.

8599, Scalenus Anticus Syndrome. Rate this syndrome by analogy with the lower radicular group (VA Code 8512), or less commonly, with either erythromelalgia (VA Code 7119) or Raynaud's Disease (VA Code 7117), depending upon predominant symptoms and overall functional impairment.

8910-8914, Epilepsies. Attacks following omission of prescribed medication or the ingestion of alcoholic beverages are not indicative of the controllability of the disease, and shall not be included in the determination of the disability percentage.

9200-9210, Psychoses. Loss of function, reflected in impaired social and industrial adaptability, is the principal criterion for establishing the level of impairment resulting from mental illness. Specifically included are those disorders manifesting disturbances of perception, thinking, emotional control and behavior sufficiently severe to limit capacity to perform military duties or otherwise earn a living. Reference should be made to member's social and industrial adjustment prior to diagnosed psychiatric illness as a baseline for assessing loss of function. All pertinent data provided by the medical board, TDRL examining physicians, and other competent medical authorities must be carefully reviewed before arriving at a final determination. When this material is conflicting, the problem issues should be resolved before a rating decision is made, and the action taken to resolve them clearly shown in the record of preceedings. It is often difficult to properly assess the degree of permanent impairment resulting from a psychotic process during the weeks immediately following an acute episode. On occasion, a member's period of intensive in-hospital treatment has not been completed at the time of the initial medical board action. With the passage of time, the clinical picture tends to stabilize and the degree of permanent impairment may then be more accurately estimated. For purposes of assessment of impairment resulting from most schizophrenias and the major affective psychoses placement on the TDRL is warranted.

a. Complete. Service members receiving this rating on either a temporary or permanent basis will most often be declared incompetent and if not transferred to a Veterans Administration Hospital, be discharged to the care of a relative or guardian. Infrequently a Service member, though not declared incompetent, may still be entitled to this rating.

b. Severe. The severely impaired category includes service members discharged to their own care or the care of relatives when manifesting marked degrees of mental deterioration, emotional impairment, permanent disintegration and poor judgment that does not completely impair social and industrial adaptability.

c. Considerable. This category should be reserved for service members who require frequent outpatient treatment and medication to maintain employment and avoid rehospitalization, and who despite treatment, exhibit extensive job instability and experience periodic relapses requiring hospitalization.

d. Definite. The service member requires occasional outpatient treatment and medication to maintain employment and avoid rehospitalization, and may do well on this treatment program, though he or she may experience some job instability and often the illness may interfere with his or her advancement.

e. Slight. Appropriate to service members after experiencing psychotic episodes with or without residuals when none of the foregoing are applicable.

f. Full Remission. This category will be used when a psychosis is in full remision and has had little permanent effect on the service member's personality. The member will not be in need of medication, followup, or medical supervision. Rate as "0 percent."

5012, 6014, 6208, 6819, 7343, 7528, 7627, 7818, 7914, 8002, 8041, New Growths, Malignant.

a. Guidance which is obviously inappropriate to rating of a specific malignancy (e.g., rules for skin cancer do not affect ratings for bone tumors) shall be disregarded.

b. Application of this guidance requires a prior finding of unfitness because of physical disability.

c. An individual in whom a malignant tumor was diagnosed which has not responded to therapy, will be permanently retired.

d. An individual with minor new growth, malignant, skin, if found unfit, will be rated as "scars-disfiguring" or on the extent of constitutional symptoms, physical impairment and/or other contributing causes.

6351, 6352, 6353, Human Immunodeficiency Virus (HIV) Infection.

a. Immunologic deficiency, neurologic involvement, decreased capacity to respond to infection, or progressive clinical or laboratory abnormalities associated with HIV, which include Acquired Immune Deficiency Syndrome (AIDS), are unfitting conditions.

b. The VASRD guidelines are clear if a very specific target organ such as the respiratory system or the nervous system is the major manifestation. The guidelines are unclear when the basis of unfitness is essentially the member with an immune compromised system with relatively minor other system(s) involvement. In addition, using the VASRD guidelines with multi-system organ involvement by the HIV virus may risk pyramiding.

c. The use of Walter Reed Staging is for descriptive purposes only and is not meant to imply a specific disability rating is warranted for that stage. The following examples may be useful as guidelines:

VA CODE	CLINICAL	DISABILITY RATING
6352-6350	Stage III, moderate impairment	30%
6352-6350	Stage IV, moderately severe impairment	60%
6351-6350	Stage VI, generalized multi-system disease, severe impairment	100%
6351-6802	Stage VI, Pneumocystis carinii-predominant pulmonary impairment	100%
6351-9302	Stage VI, severe dementia predominant	100%
6352-9400	Depression, anxiety sufficient for unfitting finding (Stage II-III)	30%
6353	Positive HIV Test, not unfitting (listed for completeness only)	
6352-6350	Minimum rating for HIV members found unfit	30%

PHYSICAL EVALUATION BOARD PROCEDURES

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PHYSICAL EVALUATION BOARD PROCEDURES

PART A - THE PRESIDENT, PHYSICAL EVALUATION BOARD AND BOARD POLICIES

5001 THE PRESIDENT, PHYSICAL EVALUATION BOARD

a. The President, PEB reports to the DIRNCPB. The President, PEB performs duties assigned by the DIRNCPB and this instruction.

b. The President, PEB shall:

(1) oversee the daily workings and administration of records review panels, hearing panels, the counseling offices, and the DES staff;

(2) refer to an appropriate panel the cases of active duty personnel, personnel on the TDRL, inactive-duty reservists, and others who are referred for consideration as the result of:

(a) reports of medical boards;

(b) periodic physical examinations of TDRL members; and

(c) requests from SECNAV, CHNAVPERS, CMC, COMNAVRESFOR, the DIRNCPB, and the CHBUMED;

(3) provide advisory opinions to the Board for Correction of Naval Records (BCNR) upon request;

(4) establish and maintain for the DIRNCPB a record in each case;

(5) dispose of case files in accordance with SECNAVINST 5215.5C;

(6) protect the privacy of individuals whose records are reviewed by the PEB in accordance with SECNAVINST 5211.5C;

(7) report to the JAG the name and social security number of each incompetent member accepted for evaluation; and

(8) perform such other specific duties and exercise such other authority as elsewhere set forth in this instruction.

5002 LEGAL REVIEW

Prior to issuing a Findings Letter, the President, PEB will ensure that the case has been reviewed for legal sufficiency:

a. by the JAG for those cases specified in 2185b(1) & b(3) of this instruction, or

b. under the supervision of an attorney, for all other cases.

5003 ERROR ON LEGAL REVIEW

a. If the President, PEB concurs with the determination of the legal reviewer that there is an error, he may direct or take corrective action.

b. If the President, PEB does not concur with the legal reviewer, then the case shall be referred to the DIRNCPB for action consistent with 2181b or c.

c. If the results of legal review result in findings more adverse to the member than originally proposed by the PEB prior to legal review, then the President, PEB shall refer the corrected findings to the member and the member shall be allowed 15 calendar days from the date of receipt within which to submit a Petition For Relief (PFR) if desired prior to issuance of the Notification of Decision Letter. Findings more favorable to a member may be issued without providing an extended period of time within which to Petition.

5004 CANCELLATION AND CORRECTION OF FINDINGS LETTERS AND NOTIFICATION OF DECISION LETTERS

a. The President, PEB may modify or cancel Findings Letters and Notification of Decision Letters and direct appropriate substitute disposition in those cases in which:

(1) there is determined to have occurred an administrative, clerical, or mathematical error in the record of proceedings, and the correction does not affect the disposition of the individual or change the computation of disability compensation on the basis of percentage of disability;

(2) the member has been discharged under other provisions of law;

(3) the member has been rehospitalized or is pending surgery, provided retirement or separation has not occurred;

(4) a member has demanded a hearing after having previously accepted findings following a records review; or

(5) such action is directed by the SECNAV or the DIRNCPB.

b. If the correction of an error would affect the disposition or adversely change the computation of disability retirement pay, the President, PEB may modify or cancel Findings Letters and Notification of Decision Letters but the member shall be notified and given 15 days from receipt of such notice in which to submit a PFR before such correction is made.

5005 PROCESSING FINAL PHYSICAL EVALUATION BOARD FINDINGS FROM HEARING PANELS

Following a formal hearing and subject to legal and quality assurance review requirements discussed in this instruction, the President, PEB will issue the PEB findings.

a. In cases where the case is approved on review, the President shall issue the findings of the hearing panel as the PEB findings.

b. In cases where an error is identified on legal review, the President, PEB shall handle the case in accordance with 5003.

c. In cases where an error is identified in a quality assurance review, the President, PEB may request the DIRNCPB invalidate the proceedings and order a de novo hearing. If the DIRNCPB orders a de novo hearing, all records of the earlier formal hearing shall be temporarily removed from the record before forwarding to the de novo panel.

5006 PROCESSING SPECIAL INTEREST CASES

a. *FIT FOR DUTY*. Unless otherwise directed by DIRNCPB, in those cases where the PEB finds the member FIT FOR DUTY and the member accepts that finding, or his or her request for a hearing is denied by the DIRNCPB, the President, PEB shall issue the Notification of Decision Letter.

b. *Others*. In those cases involving findings of UNFIT FOR DUTY that would result in the separation or retirement of an officer, see 2012, 2163 and 2185b(1).

5007 PROCESSING TEMPORARY DISABILITY RETIRED LIST CASES

See enclosure (7).

5008 PROCESSING REQUESTS FOR PERMANENT LIMITED DUTY (PLD) STATUS

See enclosure (8).

5009 PROCESSING FIT FOR DUTY MEMBER'S REQUEST FOR A FORMAL HEARING

a. A member who has been found FIT FOR DUTY or PHYSICALLY QUALIFIED on records review has no right to a hearing.

b. The President, PEB, may grant a request for a hearing before a hearing panel or recommend to the DIRNCPB, that the request be denied. The DIRNCPB, upon review of the case may grant the request for a hearing or deny it. The decision of the Director in any case will not be subject to appeal.

5010 PROCESSING CASES CONTAINING A CONDITION NOT CONSTITUTING A PHYSICAL DISABILITY

a. If a medical board reports only a condition or defect not constituting a physical disability, the case shall be referred by the President, PEB, without findings, to CHNAVPERS or CMC, for appropriate action.

b. If a medical board reports conditions that include both physical disabilities and conditions not constituting physical disabilities, only the former shall be considered in determining the member's fitness for duty. If the member is not UNFIT FOR DUTY due to physical disability, but may be unsuitable for continued military service due to a condition not constituting a physical disability, the case will be forwarded for departmental action as described in a. above, unless the member is accorded a formal hearing.

5011 CATEGORIZATION OF FINDINGS

All PEB findings should be arranged into four categories for members found UNFIT FOR DUTY:

a. **Category I:** All Unfitting Conditions

b. **Category II:** Those Conditions That Are Contributing to the Unfitting Condition.

c. **Category III:** Those Conditions That Are Not Separately Unfitting, And Do Not Contribute To The Unfitting Condition.

d. **Category IV:** Conditions Which Do Not Constitute A Physical Disability.

5012 - 5099 RESERVED

PART B - RECORDS REVIEW

5100 GENERAL FUNCTIONS OF RECORDS REVIEW PANELS

Records review panels shall screen incoming cases for acceptance and, if accepted, perform the initial disability evaluation on the basis of documentary review of case records. Each panel shall follow the policies and procedures set forth in this instruction.

5101 PANEL COMPOSITION

a. A records review panel shall normally be composed of three members, a Navy line officer, a Marine Corps officer, and a Medical Corps officer, all senior military officers selected on the basis of wide medical and/or military experience, proven performance and education. All Medical Corps officers assigned shall possess a wide cross-section of clinical experience.

b. All members of a panel shall be assigned by the DIRNCPB and report to the President, PEB.

c. The Presiding Officer of a panel shall be a Navy line or Marine Corps officer in the grade of 0-6 or above. While not mandatory, it is preferred that the Presiding Officer be of the same service as that of the member being considered.

d. The composition of a panel shall be consistent and shall not be altered by reason of the grade, status or organization of a member under disability evaluation, except as specified in 2007 and 5103 or by specific direction of the DIRNCPB.

5102 RESERVE MEMBERSHIP

See 2009a.

5103 ALTERNATE MEMBERS

a. In the absence of a principal member, an alternate member may sit on a panel. However, no more than one alternate member may sit on any panel and the use of alternate members shall be limited as much as possible to preserve equity and consistency.

b. Alternate members must be in the grade of 0-5 or above. An alternate line member may be of the same service as the Presiding Officer. However, one of the line officers on a panel must be of the same service as the member being evaluated.

c. The CHNAVPERS, the CMC, and the CHBUMED shall designate in advance and provide alternate panel members as requested by the President, PEB.

5104 ADMINISTRATOR

A member of the PEB shall be assigned as Administrator of records review panels and shall be responsible to the President, PEB for the leadership and management of day-to-day panel affairs.

5105 RECORDERS

The President, PEB shall assign to the records review panels at least one Recorder to assist with administrative processing. Recorders shall be Navy or Marine Corps officers. Recorders report to the Administrator.

5106 - 5120 RESERVED

5121 OATHS

Each panel member shall act under oath or affirmation.

5122 FINDINGS

a. Findings shall be reached through a majority vote of panel members.

b. In arriving at findings, a panel shall comply with this instruction.

c. Each finding made, which is concurred in by a majority of a panel, shall constitute the preliminary PEB findings or action of the panel.

d. Votes of individual members shall be recorded in the panel's records.

e. Any dissenting member of a panel shall make a minority report concerning those particulars in which he or she does not agree with the action of the panel. The report will become part of the record. Reference will be made to its attachment in the space provided for minority findings.

f. Findings as the result of records review shall be set forth in writing.

g. The findings in each case shall be recorded in summary form and attached to the record. Detailed case analyses or rationales shall not normally be prepared.

5123 DOCUMENTS TO BE REVIEWED

Findings shall be based upon review of documents, namely:

a. medical board reports and associated documents, together with endorsements of convening authorities and statements of members referred for disability evaluation;

b. line of duty/misconduct determinations, when appropriate;

c. statements of service, when appropriate;

d. reports of periodic physical examination (TDRL), when appropriate;

e. reports of special consultations, when appropriate;

f. statements of non-medical information as to the observation by the reporting senior of performance of duty, when appropriate;

g. fitness reports and performance evaluations supplied by the CHNAVPERS or the CMC, as they apply to disability evaluation, when appropriate;

h. NOE's, when appropriate; and

i. any other pertinent matters.

5124 ELIGIBILITY DETERMINATIONS

Certain eligibility determinations shall be included in the record but, if eligible, need not be published to the member in the findings. These determinations are, if UNFIT FOR DUTY:

a. the disability (was)(was not) (incurred)(aggravated) while entitled to receive basic pay;

b. the disability (is)(is not) the result of intentional misconduct or willful neglect, and whether such disability (was)(was not) incurred during a period of unauthorized absence;

c. (select appropriate finding)

(1) the disability (is)(is not) the proximate result of active duty or inactive-duty training (because of aggravation, when applicable), or

(2) the disability (was)(was not) incurred in line of duty in time of war or national emergency, or

(3) the member has over eight years of active service, or

(4) the disability (was)(was not) (incurred)(aggravated) after 14 September 1978;

d. the disability (is)(may be) permanent; and

e. the disability is ratable in accordance with the VASRD and this instruction.

5125 FORMAT OF FINDINGS

a. ***Cases Of Active Duty Members And Inactive-Duty Reservists Who Have Been Issued A Notice Of Eligibility.*** A panel shall find that the member is FIT FOR DUTY, or UNFIT FOR DUTY because of physical disability:

(1) If the member is FIT FOR DUTY, panel evaluation is complete.

(2) If the member is UNFIT FOR DUTY:

(a) The disability (was)(was not) (incurred) (aggravated) while entitled to receive basic pay;

(b) The disability (is)(is not) the result of intentional misconduct or willful neglect, and whether such disability (was)(was not) incurred during a period of unauthorized absence:

(c) The disability (is)(is not) stabilized at the present degree of impairment: and

(d) The disability is ratable at (percentage);

(e) The disability (is)(is not) combat related as defined by section 104 of the Internal Revenue Code. See 2150 - 2156.

b. ***Cases Of Inactive-Duty Reservists Not Eligible For Disability Benefits.*** When the member is an inactive-duty Reservist who has not been issued an NOE authorizing disability benefits, the only findings to be made are:

(1) PHYSICALLY QUALIFIED, or

(2) NOT PHYSICALLY QUALIFIED for active duty in the Naval or Marine Corps Reserve;

c. ***Cases Of Members On The TDRL Being Recommended For Administrative Removal From The TDRL.*** See 7008.

d. ***Signatures.*** Preliminary findings following records review shall be signed by the President, PEB, or by the Presiding Officer, By Direction of the President, PEB. A copy is sufficient for delivery to the member.

5126 COMPLETION OF EVALUATION

Upon completion of review by a records review panel:

a. The records review panel shall refer all cases to the President, PEB for further processing.

b. The President, PEB, shall assign to a hearing panel:

(1) all cases of members found UNFIT FOR DUTY in which the member demands a hearing,

(2) all cases in which a member having been found FIT FOR DUTY, requests a hearing, and the request is granted by the President, PEB or DIRNCPB,

(3) all cases of mentally incompetent members, and

(4) such other cases as are deemed appropriate by the DIRNCPB;

c. The President, PEB, shall refer requests for PLD status in accordance with enclosure (8) of this instruction.

d. The President, PEB, shall process special interest cases in accordance with 5006.

e. The President, PEB, shall issue a Findings Letter in all other cases which are not going to a hearing.

5127 NOTIFICATION TO MEMBER AND OPTIONS

Findings following a records review will be transmitted to the member by certified mail or hand delivery, offering the following options, where applicable:

a. ***FIT FOR DUTY Finding:***

(1) Accept the finding of FIT FOR DUTY, or

(2) Disagree with the finding of FIT FOR DUTY and request reconsideration. The member must provide information not previously available or considered for reconsideration. The member must also state whether or not a hearing is desired if the FIT FOR DUTY finding remains unchanged. If the FIT FOR DUTY finding is confirmed upon reconsideration, there is no right to a hearing. Active duty and Reserve component members, see 2160. TDRL personnel will be given the option of either returning to active duty or being discharged from the naval service; see 7019. The President, PEB, or the DIRNCPB may grant a request for a hearing when deemed necessary to preclude an error or injustice; see 5009. If a member does not request a hearing or a hearing request is denied, then the records review findings become final. If upon reconsideration, the finding is changed to UNFIT FOR DUTY, then the member is entitled to receive a new notification and to be presented with his applicable options.

b. ***UNFIT FOR DUTY Findings***:

(1) Accept the findings and waive the right to a hearing. In this case, the records review findings are then referred to the President, PEB, who shall issue and promulgate them.

(2) Disagree with the findings and exercise the right to demand a Full and Fair Hearing. In this case, the President, PEB, will refer the case to a hearing panel. If the member disagrees only with the combat-related/taxability opinion, then the member may appeal that aspect of the case to the JAG. The limited issue of combat-related/taxability does not affect the ultimate disposition of the case within the Department of the Navy and therefore does not prevent finality. Accordingly, such cases are treated as accepted and they shall be handled as described in subparagraph (1) above.

c. ***PHYSICALLY QUALIFIED Finding***:

(1) Accept the finding of PHYSICALLY QUALIFIED, or

(2) Disagree with the finding of PHYSICALLY QUALIFIED and request reconsideration. The member must provide information not previously available or considered for reconsideration. The member must also state whether or not a hearing is desired if the PHYSICALLY QUALIFIED finding remains unchanged. If the PHYSICALLY QUALIFIED finding is confirmed upon reconsideration, there is no right to a hearing and case consideration is complete unless the President, PEB, or the DIRNCPB grants a request for a hearing when deemed necessary to preclude an error or injustice; see 2160 and 5009. If upon reconsideration, the finding is

changed to NOT PHYSICALLY QUALIFIED, then the member is entitled to receive a new notification and to be presented with his or her applicable options. If a member does not request a hearing or a hearing request is denied, then the records review findings become final.

d. **NOT PHYSICALLY QUALIFIED Findings:**

(1) Accept the findings and waive a hearing. In this case, the records review findings are then referred to the President, PEB, who shall issue and promulgate them.

(2) Disagree with the records review findings and request a full and fair hearing. In this case, the President, PEB, will refer the case to a hearing panel.

5128 ACCEPTANCE/NON-ACCEPTANCE OF FINDINGS

a. Following counseling as to available options, the member shall indicate acceptance or non-acceptance of the findings of records review.

b. In those instances in which the member can fully understand the findings following records review, but due to physical impairment, is unable to accept or non-accept the findings by signing his or her name, the member's election will be valid if witnessed by a notary, or by two persons, one of whom may be the treating physician.

c. **Incompetents.** When the member has been determined to be incapable of managing his or her financial affairs by a board of medical officers convened and constituted in accordance with MANMED, Chapter 18, the member's spouse, next of kin, or court appointed guardian will be counseled and afforded the opportunity to exercise the member's options as discussed in 5127.

d. See 2024 for other special situations in which a member is mentally unable to comprehend and make elections concerning findings following records review.

5129 CONDITIONAL ACCEPTANCE

If UNFIT FOR DUTY, notwithstanding 5128 above, a member may conditionally accept records review findings. Such an acceptance means that if the government does not comply with the condition requested, then the findings are not accepted. The member must indicate whether he or she desires a formal hearing if the condition is not met. (R

5130 PRESUMED ACCEPTANCE

If no response to the Findings Letter is received by the PEB within 15 calendar days of hand delivery or receipt of certified mail by the member or legal representative concerned, then acceptance of the records review findings is presumed. Receipt by a member's attorney of the written findings constitutes receipt by the member. In the case of personnel on the TDRL only, acceptance is also presumed 15 calendar days after attempted unsuccessful delivery of certified mail to the last known address of the member. Once acceptance is presumed, the President, PEB, shall promulgate the findings.

5131 ASSIGNMENT OF COUNSEL

a. **General**. There is no right to counsel at this stage. However, a member may be represented by counsel provided by the member at no expense to the Government.

b. **Incompetents**. A member who has been found mentally incapacitated/incompetent shall be represented by a designated Judge Advocate subsequent to disability evaluation by records review.

5132 - 5199 RESERVED

PART C - HEARINGS

5200 PURPOSE AND OVERVIEW

a. No member of the naval service, including reservists, may be retired or separated for physical disability without a formal hearing unless he or she waives it (10 U.S.C. 1214). As a matter of policy, although not required by statute, no member of the reserve component shall be separated for being NOT PHYSICALLY QUALIFIED without a formal hearing unless he or she waives the right. The PEB shall provide such hearings when required.

b. Hearings may also be conducted by the PEB as information gathering bodies for the development of cases when directed by the President, PEB or DIRNCPB under paragraph 6c(2) of the basic instruction, 5126b(2) or 5126b(4). The proceeding is non-adversarial and formal rules of evidence do not apply. Members of a hearing panel are charged with making findings concerning fitness and eligibility for disability benefits and must protect the interests of both the member and the government.

c. A hearing provides an opportunity for the member to present additional material to support his or her case. Once a hearing has convened, any preliminary findings of the Record Review Panel of the PEB are null and void and are of no precedential value to a panel or the member. (A

5201 FUNCTIONS OF HEARING PANELS

a. To conduct formal hearings pertaining to disability evaluation of members of the naval service as required by 10 U.S.C. 1214 and this instruction;

b. To evaluate on the basis of formal hearings attended by a member and/or counsel:

(1) physical fitness (or physical qualification in the case of an inactive-duty member of the Naval or Marine Corps Reserve) of a member for active duty; and

(2) if found UNFIT FOR DUTY, the entitlement of the member to benefits authorized by 10 U.S.C., Chapter 61;

c. To refer hearing panel findings to the President, PEB for review, issuance and promulgation; and

d. To protect the privacy of individuals whose records are reviewed under SECNAVINST 5211.5D.

5202 PANEL COMPOSITION

a. A hearing panel shall normally be composed of three members, a Navy line officer, a Marine Corps officer, and a Medical Corps officer, all senior military officers selected on the basis of wide medical and/or military experience, proven performance and education. All Medical Corps officers assigned shall possess a wide cross-section of clinical experience.

b. All members of hearing panels shall be assigned by the DIRNCPB and report to the President, PEB.

c. The Presiding Officer for a hearing shall be a Navy line or Marine Corps officer in the grade of 0-6 or above. While not mandatory, it is preferred that the Presiding Officer be of the same service as that of the member being considered.

d. The composition of panels shall be consistent and shall not be altered by reason of the grade, status or organization of a member under disability evaluation, except as specified in 2007, 5204, or by specific direction of the DIRNCPB.

5203 RESERVE MEMBERSHIP

See 2009a.

5204 ALTERNATE MEMBERS

a. In the absence of a principal member, an alternate member may sit on a panel. However, no more than one alternate may sit on any panel and the use of alternate members shall be limited as much as possible to preserve equity and consistency.

b. Alternate members must be in the grade of 0-5 or above. An alternate line member may be of the same service as the Presiding Officer. However, one of the line officers on a panel must be of the same service as the member being evaluated.

c. Area or designated sub-area coordinators and Directors of Marine Corps Districts in which hearing panels are located shall designate in advance and provide alternate panel members as requested by the Administrators of hearing panels, acting for the President, PEB.

d. Changes in alternate member nominations shall be held to a minimum so as to retain as high a degree of expertise as practicable on the panels.

e. Alternates shall be carefully instructed in the provisions of this instruction by the Administrator. In

addition, an alternate must observe at least one full hearing, including deliberations, before actually sitting as a panel member. A prospective alternate may not discuss the case or vote while observing deliberations.

5205 ADMINISTRATOR

A panel member at each hearing panel site shall be assigned as Administrator. He or she shall be responsible for the leadership and management of day-to-day panel affairs.

5206 COUNSEL

Each panel shall be assigned the continuous services of no less than two judge advocates for a period of not less than 6 months. They shall act as Counsel for members appearing before the panels. These Counsel shall be provided from the staffs of appropriate Naval Legal Service Offices, or from such other sources as may be designated by the JAG. They shall be qualified under 10 U.S.C. 827b (Article 27(b), UCMJ). The principles attendant to the use of alternate members in 5204d, shall apply to military lawyers as well.

5207 COUNSEL FOR THE PANEL

a. At the discretion of the Presiding Officer of a panel, an attorney who is not involved in a particular case as Counsel for the Member may be assigned as Counsel for the Panel. (D

b. A civilian employed by the government who is a member of the bar of a Federal court or the highest court of a state may be appointed as Counsel for a Panel.

5208 DUTIES OF COUNSEL FOR THE PANEL (A

Counsel for the Panel shall:

a. ensure that the panel has before it information to ascertain as accurately as possible:

(1) the circumstances in which the physical impairment was incurred, and

(2) the extent of the disability;

b. when requested by the Presiding Officer, present the evidence and represent the government during the hearing;

c. when requested by the Presiding Officer, question witnesses so as to impartially elicit all available evidence.

5209 - 5219 RESERVED

5220 REPRESENTATION BY COUNSEL

a. **Military Counsel**. In order to provide maximum pre-hearing preparation time, to minimize unnecessary travel and to avoid hearing delays, a military lawyer will be detailed as Counsel for the Member immediately subsequent to the receipt of a case by a panel. Members appearing before a hearing panel have the right to be represented by a designated military lawyer at no expense to the member. A military lawyer, other than those regularly assigned to the panel, shall be provided upon request only if reasonably available and at no additional expense to the government.

b. **Civilian Counsel**. Members appearing before a hearing panel have the right to be represented by Counsel of their own choice provided by the member and at no expense to the government. This right includes the ability of the member to choose a non-lawyer to represent him or her.

c. **Associate Counsel**. When a member (or legal guardian or next-of-kin in incompetent cases) elects counsel of his or her choice, the military lawyer assigned shall act as associate counsel if requested to do so.

5221 INDEPENDENCE OF MILITARY COUNSEL

Hearing panel members shall not limit or interfere with Counsel's ability to fully represent their clients in any way. The scope of Counsel's representation is a matter between the member and Counsel only.

5222 DUTIES OF COUNSEL FOR THE MEMBER

a. The military lawyer assigned as Counsel for a member shall represent the member being evaluated unless the member refuses counsel or elects other counsel of his or her choice. In the case of an incompetent, the military lawyer assigned shall act in that capacity in all cases except when a duly appointed guardian, spouse or next of kin obtains or requests other counsel.

b. A lawyer who acts as Counsel for the Member shall:

(1) confer with and fully advise the member of legal and other substantive considerations in his or her case;

(2) represent the member, presenting to the panel information and arguments in support of the member's case and

...ical disqualification... ...service component because of ...

interests;

(3) arrange for the presence of desired witnesses and evidence in support of the member's case;

(4) interview witnesses prior to the hearing and question them during the hearing;

(5) counsel the member regarding hearing panel findings and options open to the member, and recommend courses of action that are most favorable to the member which are consistent with the letter and intent of statutes, regulations and directives addressing disability evaluation and administration;

(6) advise the member and assist, if requested, in the submission of a request for PLD;

(7) advise the member of the requirements of a PFR;

(8) prepare or assist in the preparation of a PFR at the request of the member;

(9) prepare or assist in the preparation of an appeal of the combat-related/taxability opinion of the PEB at the request of the member;

(10) in the case of incompetents, fully inform the court-appointed guardian, or, if no guardian has been appointed by a court, the member's spouse or next of kin, of the legal and factual issues in the case and act following the wishes of the guardian, spouse or next of kin, as appropriate, if those wishes do not conflict with the proper exercise of the responsibilities of Counsel concerning the member's interests.

5223 PERSONAL APPEARANCE

Members appearing before a hearing panel have the right to personally appear unless such appearance is waived or would be injurious to health.

5224 WAIVER OF PERSONAL APPEARANCE

a. **Actual Waiver**. Members have the right to waive their personal appearance before a hearing panel. In such cases the member must be represented by Counsel during the hearing.

b. **Constructive Waiver**. After due notification of the time and place of a hearing, failure to appear before a hearing panel on the part of the member, his or her counsel, and, in incompetent cases, the guardian, spouse or next of kin, shall be

considered as a waiver by the member of his or her right to personally appear unless it is reasonably shown that the failure was through no fault of the party failing to appear. The hearing shall proceed "in absentia" and the Presiding Officer will include in the record a statement of the circumstances as well as evidence of notification.

5225 LATE APPEARANCES

Late appearances, while an "in absentia" hearing is in progress, shall be heard.

5226 ACCESS TO RECORDS

A member has the right to have access to all records pertinent to his or her case, to all reference material used by the hearing panel, and to be afforded a reasonable time, of not less than 12 hours, to review the records before the hearing.

5227 SCHEDULING OF HEARINGS

The Administrator of each panel shall establish the date and time of each hearing, subject to the following guidance:

a. **Incompetent Cases**. If, after counseling by Counsel for the Member, the guardian, spouse or next of kin, does not waive the right of the member to a hearing within 15 calendar days of counseling, the case shall be scheduled for a hearing.

b. **All Others**. Hearings will be held within 30 calendar days of receipt of the record.

c. **Inadequate Information**

(1) Hearings shall not be scheduled unless all necessary records will be available and ready for review by a panel and the member, his or her counsel, guardian, spouse or next of kin for a reasonable period prior to the commencement of the hearing.

(2) Each panel shall ensure that it has available the necessary information for competent decision.

d. **Extensions**

(1) An Administrator may authorize an extension of the above times upon presentation by the member or his or her counsel of substantial grounds for such extension. In such instances, the delay shall be the minimum reasonable on the basis of the grounds presented.

(2) Notwithstanding (1) above, except as specifically authorized by the President, PEB, each requested hearing shall be concluded within 45 days following receipt of the case at the hearing site.

5228 - 5249 RESERVED

5250 HEARINGS - PRESIDING OFFICER

Presiding Officers shall preside over all sessions of a hearing and shall speak for the panel in findings matters. The Presiding Officer is responsible for the accuracy and completeness of the records forwarded to the President, PEB.

5251 HEARINGS - OPEN SESSION AND CONDUCT

a. Hearings shall be conducted in open session unless, in the opinion of the Presiding Officer, such would be prejudicial to the objective of attaining a full and fair hearing, or a closed hearing is requested by the member.

b. Hearings shall be conducted with dignity and decorum and with the objective of eliciting all the facts bearing on a case. Witnesses shall be encouraged to contribute to this objective.

5252 HEARINGS - UNIFORM

Active duty personnel and inactive-duty reservists shall appear in uniform at hearings unless specifically excused by the Presiding Officer from doing so.

5253 HEARINGS - OATHS

Each panel member and Reporter shall act under oath or affirmation. Witnesses shall be sworn in by the Presiding Officer or by Counsel for the Panel if one is assigned.

5254 HEARINGS - INTERLOCUTORY ISSUES

Presiding Officers shall rule on all interlocutory questions except challenges. These rulings may be objected to by other panel members, in which case, the matter shall be decided by a majority vote of the members in closed session.

5255 HEARINGS - CHALLENGES

a. Any panel member may be challenged by an individual undergoing physical disability evaluation at any time during the hearing for cause stated to the panel. The Presiding Officer

shall not receive a challenge to more than one member at a time. After disclosing grounds for a challenge, the challenging individual may examine the panel member. This examination shall be recorded verbatim. Counsel for the Panel, if assigned, may cross-examine the member who has been challenged. After all questions have been put and answered, any other evidence bearing on the panel member's fitness to serve shall be heard.

b. The burden of sustaining a challenge is on the individual who made the challenge. The challenged panel member shall withdraw when the hearing is closed to vote upon the challenge. One vote of the remaining members is enough to sustain the challenge. The panel shall decide the challenge according to the preponderance of the evidence. When a challenge is sustained, alternate panel members will be called by the Presiding Officer of the panel or the remaining senior member.

5256 HEARINGS - RECESSES AND CONTINUANCES

Presiding Officers may recess, adjourn, or grant a continuance, of a case where substantial reason is made apparent. However, a case may not be delayed for more than 24 hours without the approval of the Administrator.

5257 HEARINGS - PROCEDURAL GUIDE

A procedural guide issued by the DIRNCPB shall be followed in all hearings.

5258 HEARINGS - OBJECTIONS

Objections may be made to any action (other than a challenge) taken or proposed to be taken by a panel, as well as to the admission of testimony. Objections, when made, are recorded as part of the proceedings. The Presiding Officer must note in the record the ruling on any objections that may be offered. Objections are ruled upon by the Presiding Officer. However, if any other panel member dissents from the Presiding Officer's ruling, the objection is ruled upon by the entire panel in closed session. The ruling is the decision of the majority of the panel and is announced on the reopening of the hearing.

5259 HEARINGS - ADMISSION OF EVIDENCE AND TESTIMONY

a. Before taking testimony, the Presiding Officer shall, for the record, officially receive all papers pertaining to the case in open session. These papers may be inspected by the member and his or her counsel during the hearing.

b. A hearing panel shall consider all documentary evidence

transmitted to it by proper authority. A panel, in addition, may require and examine records as may be in Department of the Navy files that relate to issues before the panel. All evidence having probative value as to the determination of issues may be considered. In consideration of the weight and probative value to be accorded evidence, the members of a panel are expected to utilize their background and experience, their common sense and their knowledge of human nature and behavior. In every case, the testimony of the member concerned shall be considered in connection with all the evidence adduced and given such weight as the panel may believe it merits. When the testimony presented at the hearing indicates that the member claims to have disabilities not disclosed by the official medical records or presents evidence sharply in conflict with official medical records, and the issue thus drawn is not one that can be readily resolved by the observation of the panel, there shall be further development of the case by requesting further physical examination, special studies, or further investigation by appropriate agencies; and the hearing shall be adjourned until such development has been accomplished. Findings of a panel shall be based upon evidence consistent with a reasonable probability of truth.

c. Members undergoing disability evaluation before a hearing panel shall be permitted to introduce witnesses, depositions, documents, sworn (affidavits) or unsworn statements or other evidence in their behalf and to question all witnesses who testify at the hearing.

d. Members may make oral or written statements.

e. Members may elect not to offer evidence or testimony.

f. Members may not be required to sign any statement touching upon circumstances surrounding the origin, incurrence or aggravation of any disease or injury (10 U.S.C. 1219).

g. Members and witnesses introduced by them may be questioned by members of the panel regarding evidence or testimony submitted by them.

h. Testimony of witnesses shall be taken under oath or affirmation unless otherwise requested by the member, his or her counsel, guardian, spouse, or next of kin.

5260 HEARINGS - WITNESSES

A panel may obtain military witnesses whose presence is requested by the member or member's counsel, if witnesses are reasonably available and if, in the opinion of the panel, their testimony is essential or contributes materially to the case. Article 49,

UCMJ (10 U.S.C. 849), is used in determining reasonable availability of witnesses. The use of affidavits or depositions to obtain testimony of witnesses is encouraged. A panel may obtain military witnesses considered necessary to complete its findings and to comply with the legal requirements of a full and fair hearing. To assure the attendance of a military witness, the Administrator of a panel will request the proper commander make the necessary arrangements for the timely presence of the witness, provided the witness is reasonably available. If the commander considers that the witness is not reasonably available, he or she shall provide a statement giving the reasons therefor, and this statement shall be appended to the record.

5261 HEARINGS - FINDINGS

a. Findings shall be reached through a majority vote of the panel members.

b. In arriving at findings, a panel shall comply with this instruction.

c. Each finding made, which is concurred in by a majority of a panel, shall constitute the PEB findings subsequent to legal review.

d. Votes of individual members shall be recorded in the panel's records of proceedings and findings.

e. Any dissenting member of a panel shall submit a minority rationale concerning those particulars in which he or she does not agree with the action of the panel. The rationale will become part of the record.

f. Findings shall be set forth in writing, in summary form, and attached to the record. They shall be signed by the Presiding Officer. Also, see 5282.

5262 HEARINGS - BASIS OF FINDINGS

a. Each panel shall make findings with regard to the physical fitness for active duty (or physical qualification for active duty in the case of an inactive-duty member of the Naval or Marine Corps Reserve) on the basis of a formal personal hearing conducted in the presence of the member being evaluated, unless such appearance is waived or would be injurious to health, and/or his or her counsel.

b. In connection with each formal hearing, a panel shall consider the following information when applicable:

(1) physical evidence presented;

(2) statements of the member, his or her counsel, and/or witnesses testimony;

(3) medical board reports and associated documents, together with endorsements of convening authorities and statements of members referred for disability evaluation;

(4) line of duty/misconduct determinations;

(5) statements of service;

(6) reports of periodic physical examination (TDRL);

(7) reports of special consultations;

(8) statements of non-medical information as to the observation by the reporting senior of performance of duty of the member being evaluated;

(9) fitness reports and performance evaluations supplied by the CHNAVPERS or the CMC, as they apply to disability evaluation;

(10) NOE's; and

(11) any other pertinent matters prior to conclusion of the hearing.

5263 HEARINGS - ELIGIBILITY DETERMINATIONS

Each panel shall determine a member's statutory eligibility for benefits as required by 10 U.S.C., Chapter 61 and enclosure (2) to this instruction. These eligibility determinations shall be included in the record but, if eligible, need not be published to the member in the findings. These determinations are, if UNFIT FOR DUTY:

a. the disability (was)(was not) (incurred)(aggravated) while entitled to receive basic pay;

b. the disability (is)(is not) the result of intentional misconduct or willful neglect, and whether such disability (was)(was not) incurred during a period of unauthorized absence;

c. (select appropriate finding)

(1) the disability (is)(is not) the proximate result of active duty or inactive duty training (because of aggravation,

when applicable), or

(2) the disability (was)(was not) incurred in line of duty in time of war or national emergency, or

(3) the member has over 8 years of active service, or

(4) the disability (was)(was not) (incurred)(aggravated) after 14 September 1978;

d. the disability (is)(may be) permanent; and

e. the disability is ratable in accordance with the VASRD and this instruction.

5264 HEARINGS - INADEQUATE INFORMATION

If a panel is unable to make findings because of inadequate information, the Presiding Officer shall take appropriate action to obtain the necessary information before proceeding further.

5265 HEARINGS - DELIBERATIONS

Upon completion of the presentation of a case, a panel shall be closed for deliberation. Except as provided in 5204e, no person, other than the voting members, shall be present during closed sessions. The voting members then arrive at the PEB findings as prescribed in this Part.

5266 FORMAT OF FINDINGS

a. **Cases Of Active Duty Members And Inactive-Duty Reservists Who Have Been Issued A Notice Of Eligibility**. The hearing panel shall determine that the member is FIT FOR DUTY or UNFIT FOR DUTY; and

(1) If the member is FIT FOR DUTY, panel evaluation is complete; or

(2) If the member is UNFIT FOR DUTY:

(a) The disability (was)(was not) (incurred) (aggravated) while entitled to receive basic pay;

(b) The disability (is)(is not) the result of intentional misconduct or willful neglect, and whether such disability (was)(was not) incurred during a period of unauthorized absence;

(c) The disability (is)(is not) stabilized at the

Separate ratings for ankylosis or segments of the spine shall not

present degree of impairment,

(d) The disability is ratable at (percentage); and, if applicable,

(e) The disability (is)(is not) combat related as defined by section 104 of the Internal Revenue Code. See 2150 - 2156.

b. **Cases Of Inactive-Duty Reservists Not Eligible For Disability Benefits**. When the member is an inactive-duty reservist who is not eligible for disability benefits, under 10 U.S.C., Chapter 61, i.e., under SECNAVINST 1770.3A, the member has not been issued an NOE, the only findings to be made are:

(1) PHYSICALLY QUALIFIED, or

(2) NOT PHYSICALLY QUALIFIED for active duty in the Naval or Marine Corps Reserve.

5267 CATEGORIZATION OF FINDINGS

See 5011.

5268 NOTIFICATION TO MEMBER

a. When practical, every member appearing before a hearing panel will be notified orally of the findings of that panel either in open session or by his or her Counsel in person prior to leaving the site. Such oral notification shall be noted in the record of proceedings by the Presiding Officer.

b. The member should be specifically advised that:

(1) the hearing panel's findings are subject to an automatic review for error and legal matters before issuance by the President, PEB. PEB findings can only be challenged by means of a PFR or by Petition to the BCNR filed in accordance with enclosure (6) to SECNAVINST 1850.4C, (R

(2) he or she will receive the final PEB findings and rationale from the President, PEB after review, and

(3) he or she shall have 15 calendar days from the date of receipt of the final PEB findings and rationale to submit a PFR, if desired, before the case is finalized and CHNAVPERS or CMC is notified of the disposition by means of a Notification of Decision Letter.

5269 PERMANENT LIMITED DUTY (PLD) REQUESTS

See 5222b(6) and enclosure (8) to this instruction.

5270 DISAGREEMENT WITH HEARING PANEL FINDINGS

If a member disagrees with the findings after the hearing panel stage of disability processing, he or she may submit a PFR or Petition the BCNR. See enclosure (6) of this instruction. It is recommended that a member consult with Counsel.

5271 FINAL PHYSICAL EVALUATION BOARD FINDINGS

See 5005.

5272 - 5279 RESERVED

5280 RATIONALE

Since it is essential that the record clearly reflects facts sufficient to form the basis for the findings, a rationale shall be prepared and shall state the basis for the findings reached.

R) **5281 TRANSCRIPTS**

a. A verbatim transcript of a hearing shall be prepared and forwarded to the President, PEB only when:

(1) a finding of misconduct is to be issued;

(2) there is not a unanimous decision by the panel,

(3) the case is a Special Interest case; or,

(4) a transcript is specifically requested by the President, PEB or DIRNCPB.

A) b. A verbatim transcript is defined to include any oral mechanical recording, such as a cassette recording, of the proceedings from the time the proceedings are convened to the time they are adjourned. A typewritten transcript of the oral mechanical recording will be made only upon the approval and direction of the President, PEB. A duplicate copy of the oral mechanical recording will be made available upon the request of the member or designated counsel. It is the responsibility of the requestor to provide a receptor, such as a blank cassette, PEB, has the discretion to waive the requirement that the requestor provide a duplication receptor.

5282 DISPOSITION OF RECORDS

a. All records considered by a hearing panel, the panel's findings, rationale, transcript when required, and a proposed final PEB findings letter with proposed rationale as an enclosure thereto will be forwarded to the President, PEB.

b. A verbatim record on magnetic tape shall be kept of all hearings and retained at the hearing panel site for 7 years.

PETITIONS FOR RELIEF

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PETITIONS FOR RELIEF

6001 BASES FOR PETITIONS FOR RELIEF WITHIN THE DISABILITY EVALUATION SYSTEM

When the findings of the PEB become final or a member has been orally advised of hearing panel findings, members who have not been discharged or separated, and TDRL personnel, may Petition For Relief. Members who have been separated or permanently retired may Petition the Board for Correction of Naval Records (BCNR). The only bases for relief by means of Petition are:

A) a. **New Or Newly Discovered Evidence**. Upon the presentation of new or newly discovered evidence which by due diligence could not have been presented prior to the effective date of disposition of the individual concerned, which related to a fact in existence at the time of such disposition, which is not merely cumulative or corroborative and not such as to merely affect the weight of evidence or credibility of witnesses or records; and which would have warranted a different finding or action had it been presented; new or newly discovered medical evidence to be accepted must be corroborated by competent medical authority;

b. **Fraud, Misrepresentation, Or Other Misconduct**. Upon a showing that the directed disposition of an individual was based upon fraud, misrepresentation of material fact, or other misconduct of such nature that in the absence thereof a different finding would have been made or a different action taken; and

c. **Mistake Of Law**. Mistake of law is a basis for relief, e.g., failure to accord an individual found unfit the opportunity for a formal hearing; a directed disposition which was without authority; a decision which is contrary to the great weight of evidence of record.

6002 WHO MAY PETITION

Requests for relief on the grounds set forth in 6001 above may be made by the individual concerned, by his or her legal representative or counsel, or by any cognizant authority of the naval establishment, excluding the DIRNCPB.

6003 FORMAT

R) No particular format is required. However, a petition must be in writing, set forth the grounds for requesting relief, and state the relief desired. If a petition is based upon evidence which is not on record in the Department of the Navy, the evidence upon which it is based must be forwarded as an enclosure.

6004 WHERE TO FILE

a. **For Members Who Have Not Been Discharged Or Separated.** Requests for relief will be made by "Petition For Relief" to the Director, Naval Council of Personnel Boards, 801 N. Randolph Street, Arlington, Virginia 22203-1989.

b. **For Members Who Have Been Discharged Or Separated.** Requests for relief will be made by "Petition" to the Board for Correction of Naval Records (BCNR), using DD Form 149.

6005 TIME CONSTRAINTS

a. A "Petition For Relief" should be filed within fifteen calendar days of the receipt of a Findings Letter. In that members are normally separated within 20 days of the date the President, PEB, issues the Notification of Decision, members should not delay in preparing and filing such a petition. For example, if the member decides to petition based on the oral advisement of the hearing panel (see 5268), he or she should begin the petition without awaiting receipt of the Findings Letter.

b. A "Petition" to the BCNR must be filed in accordance with time limitations promulgated by that Board.

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POLICY GOVERNING THE TEMPORARY DISABILITY RETIRED LIST

7001 APPLICABILITY

When a member is placed on the Temporary Disability Retired List (TDRL) in accordance with enclosure (2) to this instruction, the provisions of this enclosure apply.

7002 ADMINISTRATION

The CHNAVPERS and CMC are responsible for administering the TDRL for their services, in keeping with the following guidelines:

a. maintaining an accurate account of authorized members;

b. designating medical facilities and directing members to undergo periodic physical examinations in accordance with the requirements of this chapter;

c. arranging and coordinating with the President, PEB, alternate means of examination when members are unable to undergo periodic physical examinations by reason of circumstances beyond their control;

d. ordering additional medical information when requested by the PEB;

e. monitoring failures to report for periodic physical examinations and taking appropriate action in such cases as specified in 7006 and 7008 below;

f. implementing disposition of members whose cases are finalized by the PEB, as appropriate.

7003 MEMBER'S RESPONSIBILITY TO MAINTAIN CURRENT MAILING ADDRESS WITH SERVICE

All members on the TDRL shall keep the Retired Pay Department of the appropriate Finance Center appraised of their current address at all times. Failure to respond to correspondence or orders issued to the address on file with the appropriate Finance Center either willfully or through neglect in keeping that address current may result in the termination of disability retired pay and will be considered as showing intent on the member's part to abandon benefits.

7004 TIME LIMIT FOR PAY PURPOSES

10 U.S.C. 1210 provides that the maximum time that a member's name can be carried on the TDRL in a pay status is five years.

7005 ORDERS FOR PERIODIC PHYSICAL EXAMINATION

a. ***General***. The law requires that members on the TDRL shall be given physical examinations at least once every 18 months. This includes members who have waived retired pay, in order to receive compensation from the VA, as they are still members of the naval service.

b. ***Issuance***. The CHNAVPERS or the CMC shall issue orders to members on the TDRL to proceed and report for periodic physical examinations normally via the commanding officer of the designated examining activity. The examining facility will endorse the orders and specify the date, place, and time (giving the member a minimum of 30 days) at which the member is to report. The examination shall be conducted during the month specified in the orders or during the preceding or following month. The commanding officer of the medical facility shall notify CHNAVPERS or CMC, as appropriate, and CHBUMED (Code 33) of failure to complete the examination within this time frame and the reason therefore.

7006 INABILITY TO COMPLY WITH ORDERS DUE TO CIRCUMSTANCES BEYOND THE MEMBER'S CONTROL

a. Members, guardians and anyone having actual knowledge, should notify the commanding officer of the designated medical facility when a member is unable to comply with orders. If the commanding officer is unable to resolve the difficulty, CHNAVPERS or CMC, as appropriate shall be notified. If the member is confined by civil authorities, an inpatient at a VA or civilian hospital, or is otherwise unable to undergo a periodic physical examination, the CHNAVPERS or the CMC will initiate steps to obtain an acceptable current medical examination. Reports from medical facilities of the other services, the VA and other Government agencies may be used as required periodic physical examinations. Civilian medical facilities and physicians may be used for this purpose when it is likely that it will result in a saving for the service member or the Government. In the event no report, or an inadequate report, is received, disposition of the case may be made in accordance with 7008 below.

b. Members on the TDRL shall not be entitled to permanent retirement or separation with severance pay without a current medical examination acceptable to the PEB or higher authority, unless just cause is shown for failure to report for examination.

7007 ACTION REQUIRED BY EXAMINING MEDICAL FACILITY WHEN MEMBER FAILS TO REPORT FOR PERIODIC PHYSICAL EXAMINATION

Notice of appointments for periodic physical examinations shall be sent by certified mail (or by an equivalent form of notice if such service by U.S. Mail is not available for delivery at an address outside the United States) to the member's address of record. If the member fails to appear for the scheduled appointment without contacting the medical facility for rescheduling and the member either signed for or failed to claim the certified notice of appointment, the medical facility shall forward a copy of the certified mail receipt, the member's records, and a signed statement documenting the member's failure to appear for the periodic physical examination to CHNAVPERS or CMC. If the certified notice of appointment is returned due to the member not being at that address, contact CHNAVPERS (PERS-4821/NMPC-231) or CMC (MMSR-4) for a new address. If none exists, return all records to CHNAVPERS/CMC.

7008 ACTION BY CHIEF OF NAVAL PERSONNEL OR COMMANDANT OF THE MARINE CORPS WHEN MEMBER HAS FAILED TO REPORT FOR PERIODIC PHYSICAL EXAMINATION

a. ***Stoppage Of Pay.*** Upon receiving notification that a member on the TDRL has missed an appointment and has not contacted the medical facility with a valid request for rescheduling, CHNAVPERS or CMC shall notify the appropriate Finance Center to terminate the member's retired pay (for members receiving Disability Retired Pay) or to suspend the member's retired pay account (for members who are currently waiving Disability Retired Pay in order to receive VA compensation). The CHNAVPERS or CMC shall attempt to notify members of such termination.

b. ***Administrative Removal And Administrative Discharge.*** If a member does not undergo a periodic physical examination after disability retired pay has been terminated, CHNAVPERS or CMC, as appropriate, shall administratively remove the member from the TDRL on the fifth anniversary of placement on the list without entitlement to any of the benefits provided by the applicable disability statutes unless evidence shows just cause for failure to be examined. Once administratively removed, CHNAVPERS or CMC may initiate action to administratively separate the member from the naval service under SECNAVINST 1910.4A or SECNAVINST 1920.6.

7009 REINSTATEMENT OF TERMINATED TEMPORARY DISABILITY RETIRED PAY

a. If a member, whose pay has been stopped per 7008 above, later reports for periodic physical, retired pay will be resumed, retroactively, to the date the examination was actually performed. CHNAVPERS and CMC shall notify the appropriate finance center.

b. If a member can show good cause for failure to report for periodic physical and for failing to contact the medical facility involved, the CHNAVPERS and CMC, as appropriate, have authority to reinstate disability retired pay retroactively for a period of not to exceed one year prior to the actual performance of the physical examination. An application for retroactive reinstatement may be made by the member or his or her guardian to the CHNAVPERS or to the CMC. If the application is not granted, or if the member has been discharged, the member may petition BCNR for redress.

7010 ADMISSION FOR INPATIENT OBSERVATION

Whenever inpatient observation is desirable or necessary for a proper evaluation, admission and retention as an inpatient for a period of as much as ten days are authorized. This length of inpatient observation may be extended upon authorization of the CHNAVPERS or the CMC, as appropriate. It is particularly important that admission as an inpatient be considered for proper evaluation of psychiatric (neuropsychiatric) cases.

7011 REPORT OF PERIODIC PHYSICAL EXAMINATION

a. ***Format***. The report may be prepared in medical board report, letter or narrative format.

b. ***Content***. The report shall contain:

(1) the current address and contact telephone number of the member;

(2) an interval history since the last examination with particular reference to the member's employment and time lost therefrom due to the disability for which retired;

(3) a comprehensive physical examination, reporting all physical impairments, degree of impairment, and the examiner's findings associated with each impairment. Included will be any impairment from which the member has recovered and new ones acquired while on the TDRL. Advice of consultants should be obtained if the examining physician(s) are in doubt as to an

actual physical condition or diagnosis;

(4) all clinical evaluations and laboratory studies necessary to document the member's physical condition;

(5) information regarding the member's current condition and prognosis, including current stability and the likelihood of significant change within the remaining statutory time the member might remain on the TDRL, and a comparative estimate of changes relative to the member's previous condition;

(6) in the case of psychiatric disabilities, a statement as to the current degree of impairment of industrial and social adaptability. Also see 7012 below; and

(7) a statement as to whether disclosure to the member of information relative to his or her physical or mental condition, or a personal appearance before the PEB would be detrimental to the member's physical or mental health.

7012 PERIODIC PHYSICAL EXAMINATION REPORTS IN CASES IN WHICH MENTAL COMPETENCY WAS OR IS AN ISSUE

a. In addition to the 7011 requirements above, whenever a member on the TDRL was earlier found mentally incompetent or incapable of managing his or her affairs, the report shall contain either a statement that the member continues to be incompetent, or a finding of restoration of competency.

b. If a member was not earlier declared incompetent and his or her mental condition has deteriorated such that mental competency is an issue, then a competency board shall be convened in accordance with paragraph 2024 of enclosure (2) of this instruction.

7013 DISPOSITION OF THE REPORT OF PERIODIC PHYSICAL EXAMINATION BY THE EXAMINING FACILITY

a. ***Copy Of Report To Member.*** Unless disclosure of the information contained therein would adversely affect his or her physical or mental health, the member shall be provided a copy of the report by mail with instructions to send any comments directly to the President, Physical Evaluation Board, 801 N. Randolph St., Arlington, Virginia 22203-1989. If the member is incompetent, the report shall be provided to his or her guardian.

b. ***Forwarding To President, Physical Evaluation Board.*** The commanding officer shall forward the report together with the medical records within 30 days following completion of the examination to the President, Physical Evaluation Board (TDRL).

801 N. Randolph Street, Arlington, VA 22203-1989.

7014 TRAVEL EXPENSES

a. ***General***. A member on the TDRL is entitled to travel and transportation allowances authorized, for members in his or her retired grade traveling in connection with temporary duty while on active duty, by the JFTR for periodic physical examinations and any appearances before the PEB. (10 U.S.C 1210(g)).

b. ***Attendants***. The discussion in 2010e concerning an accompanying attendant is applicable to TDRL personnel also.

c. ***Reimbursement***. To obtain reimbursement, a travel claim and properly endorsed orders showing travel actually performed are required. These should be submitted to the nearest Personnel Support Detachment for Navy members or, for Marine Corps members, submitted in accordance with the instructions included with the orders.

7015 SPECIAL RULE FOR EVALUATING OLDER CASES

Members placed on the TDRL before 15 April 1986 will continue to be evaluated during periodic examinations or upon final determinations by the PEB based on the physical disabilities and conditions for which they were temporarily retired.

7016 ACTION ON CASES BY THE PHYSICAL EVALUATION BOARD FOLLOWING PERIODIC PHYSICAL EXAMINATION

Upon acceptance of a report of a periodic physical examination or a report of other current medical examination, the PEB shall evaluate such report and take one of the following actions:

a. ***For Conditions Not Stabilized And Not Near Five Years On The Temporary Disability Retired List.***

(1) If the member's five year period on the TDRL will not soon terminate, and the PEB determines that no change in status is warranted, the PEB will notify the CHNAVPERS or CMC and the member that the member will be retained on the TDRL.

(2) The percentage rating of disability will not be lowered or raised while a member is assigned to the TDRL.

(3) A member who is continued on the TDRL does not have the right to demand a formal hearing.

b. ***For Conditions Which Have Stabilized Or Are Near Five***

Years On The Temporary Disability Retired List. If the member's 5 year period on the TDRL will soon terminate, or if, as a result of a periodic physical examination, the PEB determines that the disability of the member concerned has become stabilized or permanent as discussed in paragraph 2164 of enclosure (2) to this instruction, then the case shall be processed like any other case in accordance with this instruction (except that any retirement must be by transfer to the permanent retired list vice the TDRL). The final rating assigned may be the same, higher, or lower than that which was originally afforded the member. (A

7017 REMOVAL FROM THE TEMPORARY DISABILITY RETIRED LIST

A member's name shall be removed from the TDRL when:

a. the PEB determines that:

(1) the member is FIT FOR DUTY, or

(2) the disability is currently ratable at less than 30 percent and the member has less than 20 years of active service, even though the disability is not stabilized, or

(3) maximum improvement has been achieved or the disability is permanent. (In any event, a member's case should be finalized by the fifth anniversary of placement on the TDRL).

b. the member is administratively removed by CHNAVPERS/CMC on the fifth anniversary of placement on the TDRL for failure to report for periodic examination.

7018 DISPOSITION AFTER PROCESSING BY THE PHYSICAL EVALUATION BOARD

a. **Retention On The TDRL.** The member maintains his or her same status on the TDRL until evaluation by the PEB after his or her next periodic physical examination or until administratively removed.

b. **Removal From The TDRL**

(1) **Administrative Removal.** See paragraph 7008 above.
(2) **Fit For Duty.** See paragraph 7019 below.
(3) **Separation.** See paragraphs 7019d and 7020 below.
(4) **Retirement.** See paragraph 7021 below.

7019 FIT FOR DUTY FOLLOWING EVALUATION OF PERIODIC PHYSICAL EXAMINATION - REENLISTMENT OR REAPPOINTMENT

If the PEB determines that a member is fit to perform duties, the following applies, provided the member consents:

a. **To Members Of Regular Components**

(1) **Enlisted Members.** An enlisted member of a regular component shall be reenlisted in his or her regular component provided he or she is otherwise qualified for reenlistment. An enlisted member of a regular component shall have both his or her status on the TDRL and disability retired pay terminated on the date preceding reenlistment in the regular component of which he or she was a member before being placed on the TDRL. Any such reappointment or reenlistment shall be in a rank, grade, or rating not lower than the rank, grade or rating permanently held by the member at the time his or her name was placed on the TDRL, and may be in the rank, grade, or rating immediately above the rank, grade or rating permanently held. For the purpose of being placed on a lineal list, promotion list, etc., the member will be given such seniority in rank, grade, or rating, or will be credited with such years of service as the SECNAV may authorize. In this connection, consideration will be given to the probable opportunities for advancement and promotion to which the member might reasonably have been entitled had it not been for the placement of his or her name on the TDRL.

(2) **Officers.** An officer of a regular component, if otherwise eligible, shall be recalled to active duty and, as soon as practicable, be reappointed to the active list of his or her regular component, even if this means that there will be a temporary increase in the number of officers authorized for his or her grade. Any such reappointment shall be in a rank or grade not lower than the rank or grade permanently held by the member at the time his or her name was placed on the TDRL, and may be in the rank or grade immediately above the rank or grade permanently held. For the purpose of being placed on a lineal list, promotion list, etc., the member will be given such seniority in rank or grade, or will be credited with such years of service as SECNAV may authorize. In this connection, consideration will be given to the probable opportunities for advancement and promotion to which the member might reasonably have been entitled had it not been for the placement of his or her name on the TDRL. An officer in a regular component shall have disability retired pay terminated on the date preceding recall to active duty.

b. **To Members Of Reserve Components.** A member of a reserve component shall be reappointed or reenlisted as the case may be, in the reserve component. A member of a reserve

component, whether officer or enlisted, shall have his or her status on the TDRL and disability retired pay terminated on the date preceding reappointment or reenlistment in a reserve component.

c. **To Members Of The Fleet Reserve Or Fleet Marine Corps Reserve.** A member of the Fleet Reserve or Fleet Marine Corps Reserve, who is found FIT FOR DUTY, shall resume his or her status in the Fleet Reserve or Fleet Marine Corps Reserve in the grade held when placed on the TDRL, or the next higher grade if considered qualified therefor in view of 10 U.S.C. 1210.

d. **When A Member Does Not Consent To Reappointment Or Reenlistment.** If a member does not consent to reappointment or reenlistment, his or her status on the TDRL and disability retired pay shall be terminated as soon as practicable.

7020 DISABILITY LESS THAN 30 PERCENT FOLLOWING EVALUATION OF PERIODIC PHYSICAL EXAMINATION

a. **Separation.** A member on the TDRL who has less than 20 years of active service computed under 10 U.S.C. 1208 and a physical disability ratable at less than 30 percent disability (but continues to render him or her UNFIT FOR DUTY) under the VASRD in use at the time of determination shall be removed from the TDRL and may be separated under 10 U.S.C. 1203 or 1206 whichever applies in accordance with 10 U.S.C. 1210(e). This is without regard to the stability of the unfitting condition.

b. **Severance Pay.** If the disability is ratable at less than 30 percent but continues to render the member UNFIT FOR DUTY, and if the member has served at least 6 months, but less than 20 years of active duty (and will not be entitled to retired pay or retainer pay by other provisions of law), he or she will be discharged with severance pay computed in accordance with 10 U.S.C. 1212.

c. **Exceptions To Separation With Severance Pay**

(1) **Reversion To Former Status - Members Of The Fleet Reserve Or Fleet Marine Corps Reserve.** A member of the Fleet Reserve or Fleet Marine Corps Reserve on the TDRL who has 20 years service computed under 10 U.S.C. 1208 and who, as a result of a periodic physical examination, will become entitled to severance pay under 10 U.S.C., Chapter 61, shall be given an opportunity to request that his or her name be removed from the TDRL and that his or her status in the Fleet Reserve or Fleet Marine Corps Reserve be resumed. (R

(2) **Transfer To Fleet Reserve Or Fleet Marine Corps**

R) **Reserve. Members having completed 20 years or more of active service under 10 U.S.C. 6330.** A member on the TDRL who has 20 years service computed under 10 U.S.C. 1208 and who, as a result of a periodic physical examination, will become entitled to severance pay under 10 U.S.C., Chapter 61, shall be given the opportunity to request transfer to the Fleet Reserve or Fleet Marine Corps Reserve if the member is eligible for transfer under 10 U.S.C. 6330.

(3) **Transfer To Inactive Status List.** Officers and enlisted members of the Naval and Marine Corps Reserve on the TDRL who have at least 20 years of service computed under 10 U.S.C. 1332 and who, as a result of a periodic physical examination, are determined to be entitled to severance pay under 10 U.S.C., Chapter 61, shall be given an election, instead of being separated, to request transfer to the inactive status list under 10 U.S.C. 1209 and 1335, to receive retired pay at age 60.

7021 PERMANENT RETIREMENT

a. **Members With 20 Years Or More Of Service Computed Under 10 U.S.C. 1208.** If, as a result of a periodic examination or upon final determination, it is determined that a member's physical disability is of a permanent nature and if he or she has at least 20 years of service computed under 10 U.S.C. 1208, the member's name shall be removed from the TDRL and he or she shall be retired under 10 U.S.C. 1201 or 1204, whichever applies, with retired pay computed under 10 U.S.C. 1401.

b. **Members With Less Than 20 Years Of Service Computed Under 10 U.S.C. 1208.** If, as a result of a periodic examination, or upon final determination, it is determined that the member's physical disability is of a permanent nature and is at least 30 percent under the VASRD (as modified by this instruction) in use at the time of the determination, the member's name shall be removed from the TDRL and he or she shall be retired under 10 U.S.C. 1201 or 1204 whichever applies.

PERMANENT LIMITED DUTY PROCEDURES

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PERMANENT LIMITED DUTY

8001 CONTINUANCE ON ACTIVE DUTY OF PHYSICALLY UNFIT

a. The general policy is that any service member who is found to be UNFIT FOR DUTY by reason of physical disability to perform the duties of his or her office, grade, rank, or rating will be retired or separated. However, as an exception to this general policy, and consistent with the guidance in this enclosure, when the CHNAVPERS or CMC determine that a need for a service member's skill or experience justifies the continuance of that service member on active duty or in active status in a limited assignment, the service member may be retained on active duty or in active status for a specified period of time. Such status is known as Permanent Limited Duty (PLD).

b. A service member who is continued on active duty or in active status in accordance with this enclosure, will be granted disability benefits upon final retirement or separation if eligible and if the disability is still present to a disabling degree.

8002 LIMITED ASSIGNMENT

The term "limited assignment" means assignment with appropriate limitations based on the specific disabilities in each case. Specific limitations on duty assignments for members classified as PLD are contained in the Navy and Marine Corps personnel manuals.

8003 AUTHORITY TO RETAIN

CHNAVPERS and CMC may retain on active duty in a PLD status UNFIT FOR DUTY members who meet the following criteria. Each case shall be individually considered. The UNFIT FOR DUTY member's length of service is not controlling in PLD decisions.

a. Subject to the limitations in subparagraphs e and f below, the disabling physical condition must be basically stabilized or one in which accepted medical principles indicate a slow progression of the disabling impairment. The member must also be able to maintain himself or herself in a normal military environment, without adversely affecting his or her health or the health of other members, or without requiring an inordinate amount of medical care.

b. UNFIT FOR DUTY members shall normally be retained to complete service obligations for education or training. See 8006.

c. UNFIT FOR DUTY members may be retained to meet shortages against authorized strength in an enlisted skill, competitive category, designator or specialty, or a military occupational field or specialty, provided they can perform required duties in an authorized billet for that skill.

d. UNFIT FOR DUTY members may be retained to complete a current tour of duty or to provide continuity in key billets pending relief.

e. UNFIT FOR DUTY members may be retained in a PLD status for a specified period of time, at the request of a commanding officer of a medical treatment facility (MTF), to meet the need for that specific type of condition in a graduate medical education program at a specific MTF that cannot be met at that MTF by other authorized means and is essential to maintaining program accreditation. UNFIT FOR DUTY members may also be retained for MTF-specific medical research protocols. In each case, the request for retention must be fully documented to demonstrate the essentiality and must be approved by the SURGEN and the CHNAVPERS or CMC, as applicable.

f. UNFIT FOR DUTY members may be retained in a PLD status for a specified period of time, at the request of a commanding officer of a MTF, to complete a current episode of treatment at a specific MTF when the continuity of care is deemed essential for the following reasons. In each case, the request must be fully documented and approved by the SURGEN and the CHNAVPERS or CMC, as applicable.

(1) Medical specialties or facilities are not available in the VA system,

(2) Transportation to another medical facility is medically contraindicated, or

(3) Transfer to the VA would result in abandonment of care because of VA caseload.

g. CHNAVPERS or CMC shall establish the termination date of the PLD period when authorizing PLD.

8004 RETIREMENT ELIGIBLE MEMBERS

Members with over 20 years of active service shall not be continued on active duty solely to increase their monetary benefits, nor shall they be continued unless their employment is justified as being of value to the naval service under the criteria in 8003.

8005 INACTIVE-DUTY RESERVISTS

a. There is no Permanent Limited Duty (PLD) status for inactive duty reservists.

R) b. Those inactive duty reservists who have been found NOT PHYSICALLY QUALIFIED (NPQ) and who have 18 but less than 20 qualifying years of service for retirement may be retained in the Standby Reserve (Active Status List). While in the Standby Reserve, the member may complete correspondence courses until attaining 20 qualifying years for retirement or completion of two full anniversary years, whichever occurs first.

8006 RETENTION IN PERMANENT LIMITED DUTY STATUS TO COMPLETE SERVICE OBLIGATION

CHNAVPERS and CMC will normally retain UNFIT FOR DUTY members on active duty in a PLD status for the period required to complete their active service obligation for:

a. enlisted education and training, including Enlisted Education Advancement Program, initial and advanced skill training schools which require obligation beyond initial enlistment contract, nuclear power field, advanced electronic field, and advanced technical field programs and similar programs. The CHNAVPERS or CMC may waive this requirement on a case by case basis when, as the result of a disabling condition, there is no billet in which disabled members can adequately perform the required duties.

b. funded education programs including Naval Academy, NROTC, Armed Forces Health Professions Scholarships, Uniformed Services University of Health Sciences and equivalent funded education programs; advanced education or technical training requiring additional obligated service, including postgraduate education, service school or college, law school, medical residency (including fellowships), flight training, naval flight officer training, and equivalent programs. The ASN (M&RA) may waive the requirement in cases where the CHNAVPERS or CMC demonstrates that, as a result of the disabling condition, there is no billet in which the disabled officer can adequately perform the required duties.

8007 VOLUNTARY RETENTION

The CHNAVPERS and the CMC may also, upon a member's request, particularly from a member with over 18 years but less than 20 years of active service, retain UNFIT FOR DUTY members in PLD status when such retention is consistent with the guidance in 8003 and is in the best interests of the service and the individual.

8008 REQUESTING PERMANENT LIMITED DUTY (PLD) STATUS

UNFIT FOR DUTY members, who desire continuation on active duty in PLD status, should submit a request in writing to the President, PEB. The request may be in the form of a brief signed statement appended to the Findings Letter, typed on the Findings Letter itself, or submitted by a DES Counselor or Counsel for a Member. If PLD status is a condition of accepting a finding of UNFIT FOR DUTY as provided in paragraph 6c(4) of the basic instruction and 5129, the member must also indicate whether he or she desires a formal hearing if the PLD condition is not met. (R

8009 PROCESSING OF PERMANENT LIMITED DUTY REQUESTS

a. If the President, PEB receives a request for PLD status from a member prior to issuing the final determination in a disability case, the President shall suspend disposition action and refer the request for continuance on active duty to the CHNAVPERS or to the CMC, as appropriate, along with a recommendation as to whether or not continued duty will constitute a hazard to the member or others.

b. If a member requesting continuation has not traveled to a hearing site at government expense for a scheduled hearing, the President, PEB, shall delay any planned hearing for 30 days from the date the President receives the request.

c. If a member has traveled at government expense to a hearing site for a scheduled hearing and then submits a request for PLD status, the PEB shall complete processing of the case, if not already so accomplished. The request may be transmitted either in advance or with the completed case file to the President, PEB.

d. Upon referral by the President, PEB, the CHNAVPERS or the CMC, as appropriate, shall act on requests for PLD status, following the guidelines in this enclosure, within 20 days. (R

8010 ACTION BY PRESIDENT, PEB FOLLOWING DECISION CONCERNING PERMANENT LIMITED DUTY STATUS

a. **Permanent Limited Duty Authorized**. When CHNAVPERS or CMC authorizes PLD for UNFIT FOR DUTY members, the President, PEB, shall take the following actions:

(1) For PLD of 6 months or less: the President PEB, shall, in the Notification of Decision letter, direct the PLD authorized, and effective the day following the last day of the PLD, the appropriate separation and the percentage of disability from the Findings Letter.

(2) For PLD of more than 6 months: the President, PEB, shall, in the Notification of Decision letter, direct the authorized period of PLD, advise that disability separation and disability rating will be deferred until the end of the period of PLD, and require that the member be again referred to the DES for reevaluation as set forth in 8012.

b. **Permanent Limited Duty Not Authorized**. If the CHNAVPERS or CMC does not authorize PLD, the President, PEB, shall complete normal processing of the case.

8011 MONITORING MEMBERS RETAINED IN PERMANENT LIMITED DUTY STATUS

An UNFIT FOR DUTY member continued in a PLD status shall be closely observed to assure that further continuance, or conversely separation, is consonant with the best interests of the service and the member. When, in the opinion of a member's commanding officer, the member has become unable to perform his or her duties in the limited assignment, the member shall be referred to a MTF for observation, treatment, and appropriate disposition. Unless the disqualifying condition has progressed to a point at which the member is no longer able to perform duty with limitations, the member shall complete the PLD period.

8012 EXPIRATION OF PERMANENT LIMITED DUTY STATUS

R) All members continued in PLD status for a period in excess of 6 months shall be currently examined and again referred to the DES for reevaluation near the completion of the PLD period or at such time as the PLD is otherwise terminated.

THE OFFICER PHYSICAL DISABILITY REVIEW BOARD

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THE OFFICER PHYSICAL DISABILITY REVIEW BOARD

PART A - DOCUMENTARY REVIEWS AND GENERAL BOARD REQUIREMENTS

9001 INTRODUCTION AND ESTABLISHMENT

a. 10 U.S.C. 1554 empowers and directs the Secretary of the Navy (SECNAV) to establish a board to review a limited class of disability cases wherein officers were retired or released from active duty without pay for physical disability. The Officer Disability Review Board (ODRB) is hereby established by the SECNAV as that statutory board to render opinions in such cases in which an affected officer requests review of the findings and decisions of a retiring board, board of medical survey, or disposition board. ODRB advisory opinions and recommendations must be forwarded to the SECNAV for final decision.

b. In performing its responsibility, the ODRB shall be guided by the Navy disability evaluation instructions effective at the time of the contested action as well as by statutes and directives of higher authority.

9002 OVERSIGHT

The ODRB shall function as an element of the Naval Council of Personnel Boards. The Director, Naval Council of Personnel Boards (DIRNCPB), shall exercise oversight and administrative control of the ODRB.

9003 FUNCTIONS

a. To meet on an ad hoc basis, pursuant to 10 U.S.C. 1554, to review the cases of officers who have been retired or released from active service without pay for physical disability and to provide recommended findings regarding their physical fitness and disposition:

b. To evaluate on the basis of documentary review, or formal hearing attended by a petitioner and/or his or her Counsel:

(1) the physical fitness of an officer petitioner for active duty:

(2) if found unfit, the percentage of disability of the petitioner at the time of the officer's separation from active duty, or at the time of removal from the Temporary Disability Retired List (TDRL): and

(3) the entitlement to disability severance or retired pay of a petitioner at the time of separation from active duty, or at the time of removal from the TDRL.

9004 BOARD COMPOSITION

The Board constituted to act in a given case shall be composed of five career military officers, selected on the basis of wide medical and/or military experience, proven performance and education.

a. The President shall be a Navy or Marine Corps line officer in the grade of O-6 or above.

b. Two of the remaining officers shall be of the Medical Corps in the grade of O-5 or O-6 with preference given to the latter.

c. Individual membership may vary within the limitations of the prescribed composition.

d. When the petitioner is or was a member of the Navy or Marine Corps Reserve, at least one member of the board shall be a member of the Navy or Marine Corps Reserve.

9005 APPOINTMENT OF OFFICERS

Officers to constitute the ODRB, if not available at the Naval Council of Personnel Boards, shall be made available by the Chief of Naval Personnel (CHNAVPERS), the Commandant of the Marine Corps (CMC), and the Surgeon General (for Medical Corps officers).

9006 CONVENING

a. Upon petition to the DIRNCPB by an officer retired or released from active duty without pay for physical disability, the DIRNCPB shall designate and appoint the membership of the ODRB.

b. The petition for review shall contain a request for a documentary or formal hearing; a statement identifying the board whose error is sought to be corrected; a statement identifying the error(s) in the finding or decision; and the relief requested.

9007 RECORDER

A Recorder for a board shall be designated by the DIRNCPB in the convening order. The Recorder may be a commissioned officer or a

civilian employee of the government.

9008 CONFLICT OF INTEREST

No member or counsel of the board may have a personal interest in or have been a member of another board that ever considered the case under consideration.

9009 ADEQUATE INFORMATION

The board shall ensure that it has before it, within a reasonable time frame, all information necessary for competent review and opinion. The Chief, Bureau of Medicine and Surgery shall provide medical assistance upon request of the board. The board shall afford a petitioner a reasonable amount of time to provide evidence outside Navy possession.

9010 SCHEDULING

As objectives, documentary reviews or hearings shall be held within 30 days and a report issued within 45 days of receipt of the case for review. Notification of formal hearings shall be issued by mail to all concerned at least 30 days in advance of the hearing.

9011 TYPES OF BOARD MEETINGS

ODRB shall provide advisory opinions on the basis of formal, personal appearance hearings, unless waived by the petitioner, in which case a documentary review shall be conducted.

9012 CONTENT OF OPINIONS

The board shall render advisory opinions, in a letter report, as to whether:

a. the petitioner was, at the time of separation or retirement from the naval service, physically fit for duty or unfit because of physical disability:

b. if the petitioner was unfit, such disability (was) (was not) (incurred) (aggravated) while the petitioner was entitled to receive basic pay:

c. such disability (was) (was not) the result of intentional misconduct or willful neglect, and whether such disability (was) (was not) incurred during a period of unauthorized absence:

d. whether

(1) such disability (was) (was not) the proximate result of active duty (because of aggravation, when applicable), or

(2) such disability (was) (was not) incurred in line of duty, in time of war or national emergency, or

(3) the petitioner had over eight years of active service.

e. accepted medical principles indicate that such disability (is) (may be) permanent; and

f. such disability was ratable at (percentage) in accordance with the Veterans Administration Schedule for Rating Disabilities (VASRD) in effect at the time of retirement or separation.

g. if a prior Navy board is being reviewed as part of a case, a statement as to whether the decisions or recommendations of the board being reviewed are affirmed or reversed.

9013 BASIS OF OPINIONS

In arriving at its opinions, the board shall comply with:

a. applicable statutes and directives in effect at the time of the contested separation or retirement without disability benefits; and

b. the VASRD in effect at the time of the contested separation or retirement without disability benefits.

9014 MAJORITY VOTE

Advisory opinions shall be formulated by vote of a simple majority of the five members.

9015 SIGNATURES

Advisory opinions of the board shall be signed by the President and the Recorder. Also see 9016 below.

9016 MINORITY OPINIONS

If there is a minority vote, a minority rationale shall be included in the record of proceedings. A minority rationale shall be signed by the member or members so voting.

9017 DOCUMENTARY REVIEWS

In connection with each review, the board shall consider:

a. medical board reports and associated documents, together with endorsements of convening authorities and statements and medical evidence of petitioners;

b. line of duty/misconduct investigations, when applicable;

c. statements of service supplied by CHNAVPERS or CMC;

d. reports of physical examination;

e. reports of special consultations, when applicable;

f. fitness reports;

g. statements of the petitioner, his or her counsel, guardian, or other witnesses (formal hearings); and

h. any other pertinent matters.

9018 OATHS

a. ***Members***. Members of the board shall be sworn as follows:

"Do you _____, _____, _____, _____, and _____ solemnly swear (or affirm) that you will honestly and impartially review and report upon the case(s) now before the board and about to be reviewed. So help you God."

b. ***Recorder***. The Recorder shall be sworn as follows:

"Do you _____ solemnly swear (or affirm) that you will keep a true record of the proceedings of this board in the case(s) before the board and about to be reviewed."

c. ***Reporter***. The Reporter shall be sworn as follows:

"Do you _____ solemnly swear (or affirm) that you will faithfully perform the duties of reporter in aiding the recorder to take and record the proceedings of the board."

d. ***Witnesses***. A witness to be sworn appearing before the board shall be sworn as follows:

"Do you _____ solemnly swear (or affirm) that you will make true answers to such questions as may be put to you in the case of _____ now before the board."

e. ***Challenged Member.*** Any member of a board who is challenged shall be sworn by Counsel for the board as follows:

"Do you _____ solemnly swear (or affirm) that you will answer truthfully to the questions touching upon your competency to serve as a member of the board in this case. So help you God."

9019 RECORDING THE PROCEEDINGS OF DOCUMENTARY REVIEWS

The proceedings shall be recorded in summary form.

PART B - FORMAL HEARINGS

9020 COUNSEL

a. An officer of the Judge Advocate's General Corps shall be assigned by the Commanding Officer, Naval Legal Service Office, Washington Navy Yard, when a formal hearing is conducted. The officer shall function as Counsel for the Board.

b. The petitioner may be represented by civilian counsel, provided by the petitioner, at no expense to the government.

9021 CONDUCT OF FORMAL HEARINGS

a. ***Open Sessions.*** Formal hearings shall be conducted in open session unless, in the opinion of the President, an open session would be prejudicial to the objective of attaining a full and fair hearing, or a closed hearing is requested by the petitioner.

b. ***Interlocutory Issues.*** The President of the board shall rule on all interlocutory issues except challenges. His or her rulings may be objected to by other board members, in which case the matter will be decided by a majority vote of the members in closed session.

c. ***Recesses and Continuances.*** The President of the board may recess or grant a continuance where good cause is shown.

d. ***Presiding Officer.*** The President of the board shall preside over all sessions and shall speak for the board in announcing recommended findings and the result of any interlocutory vote.

e. Board sessions shall be conducted with dignity and decorum and with the objective of eliciting all facts bearing on a case.

9022 ADMINISTRATION OF OATHS

Once a formal hearing has been called to order by the President, Counsel for the Panel shall administer any required oaths.

9023 EVIDENCE AT FORMAL HEARING

a. Before taking testimony, Counsel for the Board shall, for the record, present all papers pertaining to the case to the board in open session. These documents may be inspected by the petitioner and Counsel. The petitioner or Counsel may cross-examine the author of a document, record, or statement by calling the author as a witness, if reasonably available, or by taking a deposition.

b. The ODRB shall consider all documentary evidence transmitted to it by proper authority. The Board, in addition, may require and examine such records as may be in the files of the Department of the Navy that relate to the issues before the board. All evidence tendered to the board having probative value as to the determination of issues before the board shall be considered. In consideration of the weight or probative value to be accorded evidence, the members of the board are expected to utilize their background and experience, their common sense, and their knowledge of human nature and behavior. In every case, the testimony of the petitioner concerned shall be considered in connection with all evidence adduced and given such weight as the board may believe it merits. When the testimony presented at the hearing indicated that the petitioner claims to have disabilities not disclosed by the official medical records or presents evidence sharply in conflict with official medical records, and the issue thus drawn is not one that can be readily resolved by the observation of the board, there shall be further development of the case by requesting further physical examination, special studies, or further investigation by appropriate agencies; and the hearing shall be adjourned until such development has been accomplished. Recommended findings of the board shall be based upon evidence consistent with a reasonable probability of truth.

c. A petitioner at a formal hearing before the ODRB shall be permitted to introduce witnesses, depositions, documents, sworn or unsworn statements, or other evidence in their behalf and to question all other witnesses who testify at the hearing.

d. A petitioner may make oral or written arguments

personally and through Counsel.

e. A petitioner may elect not to offer evidence or testimony.

f. A petitioner may not be required to make any statement touching upon circumstances surrounding the origin or aggravation of any disease or injury (10 U.S.C. 1219).

g. A petitioner, subject to e and f above, may be questioned by members of the board regarding evidence or testimony submitted.

h. Testimony of witnesses will be taken under oath or affirmation unless otherwise requested by the petitioner, Counsel, or trustee (guardian).

9024 OBJECTIONS

Objections may be made to any action (other than a challenge) taken or proposed to be taken by the board, as well as to the admission of evidence. Objections are recorded as part of the proceedings. The board must note in the record its ruling on any objections that may be offered. Ordinarily, the objections are passed upon by the President of the Board. However, if any other member dissents from the President's ruling, the objection is ruled upon by the board in closed session. The ruling is the decision of the majority of the board and is announced on the reopening of the hearing.

9025 CHALLENGES

a. Any member of the board may be challenged for cause at any time during the hearing. The Board will not receive a challenge to more than one member at a time. After disclosing grounds for challenge, the petitioner may examine the challenged member. Counsel for the Board may cross-examine the challenged member. After such examination and cross-examination, any other evidence bearing on the member's fitness to serve shall be heard.

b. The burden of sustaining the challenge is on the person who made the challenge. The challenged member shall withdraw when the board is closed to vote upon the challenge. A tie or majority vote is sufficient to sustain the challenge. The board shall decide the challenge according to the preponderance of the evidence. When a challenge reduces the board below the required number of members, alternate members will be called by the President of the Board, or the senior remaining member, if the President is removed as a result of a challenge.

9026 RECORDING PROCEEDINGS AND TRANSCRIPT REQUIREMENTS

The entire hearing shall be recorded and a verbatim transcript prepared.

9027 RECORD OF PROCEEDINGS

a. Votes of individual members shall be recorded in the report of proceedings.

b. The record of proceedings shall include copies of the appointing order and any other communications from the convening authority. Where a formal hearing was conducted, a verbatim transcript shall be included. A transcript of the proceedings is not required in the case of a documentary review. The advisory opinions of the board shall be included, together with documents, testimony and other information presented to the board for its consideration.

c. Documents constituting the remainder of the record of proceedings shall be assembled, if applicable, as follows:

(1) ODRB letter of transmittal with record of proceedings (formal) or (documentary review)

(2) Notification to petitioner of formal hearing

(3) Rights letter to petitioner

(4) SECNAV action

(5) Any PEB actions

(6) Medical Board Report (with copy of Health Record and Clinical Record)

(7) NAVMED 6100/2 - Statement of Patient concerning findings of medical board

(8) Line of Duty Investigation with endorsements

(9) Statement of Service

d. The record of proceedings shall be signed by the President of the Board and the Recorder.

e. Any corrections to the proceedings and advisory opinions shall be initialled by the President of the Board.

f. A copy of the record of proceedings shall be provided

to the petitioner and his or her Counsel.

9028 TRANSMITTAL OF PROCEEDINGS

In both documentary reviews and formal hearings, the record of proceedings shall be transmitted to the Judge Advocate General for review and for further forwarding to the Secretary of the Navy (ASN(M&RA)) for resolution.

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evidence sharply in conflict with official medical records, and

ed by analogy to d. Other forms of inflammatory liver disease will be rat